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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 223.

THE UNITED STATES, APPELLANT,

vs.

BITTER ROOT DEVELOPMENT COMPANY, ANACONDA MINING COMPANY, ANACONDA COPPER COMPANY, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED APRIL 8TH, 1905.

(19703.)

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a No. 1047.

United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
BITTER ROOT DEVELOPMENT COMPANY (A CORPORATION), Anaconda Mining Company (a corporation), Anaconda Copper Company (a corporation), Anaconda Copper Mining Company (a corporation), Margaret P. Daly, Margaret P. Daly as Executrix of the Last Will and Testament of Marcus Daly, deceased, John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy, appellees.

Transcript of record upon appeal from the United States Circuit Court for the District of Montana.

1 The Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES OF AMERICA, COMPLAINANT AND Appellant,
vs.
BITTER ROOT DEVELOPMENT COMPANY (A CORPORATION), Anaconda Mining Company (a corporation), Anaconda Copper Company (a corporation), Anaconda Copper Mining Company (a corporation), Margaret P. Daly, Margaret P. Daly as Executrix of the Last Will and Testament of Marcus Daly, deceased, John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy, defendants and appellees. } In equity.

Caption.

Be it remembered that on the 26th day of February, 1903, the complainant filed its bill of complaint herein, which is entered of final record, as follows, to wit:

2 THE UNITED STATES OF AMERICA.

The Circuit Court of the United States for the Ninth Circuit and District of Montana.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
BITTER ROOT DEVELOPMENT COMPANY (A CORPORATION), Anaconda Mining Company (a corporation), Anaconda Copper Company (a corporation), Anaconda Copper Mining Company (a corporation), Margaret P. Daly, Margaret P. Daly as Executrix of the Last Will and Testament of Marcus Daly, deceased, John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy, defendants. } In equity.

Bill of complaint.

To the judges of the Circuit Court of the United States for the District of Montana:

Your orator, the United States of America, by Philander C. Knox, Attorney-General of the United States, brings this, its bill of com-

3 plaint against the Bitter Root Development Company, a corporation; the Anaconda Mining Company, a corporation; the Anaconda Copper Company, a corporation; the Anaconda Copper Mining Company, a corporation, all organized under and by virtue of the laws of the State of Montana; Margaret P. Daly; Margaret P. Daly as executrix of the last will and testament of Marcus Daly, deceased; John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy, citizens of the United States and of the State of Montana, and residents in the State of Montana, and thereupon your orator complains and says:

1. That on the 1st day of April, 1888, said complainant was and is now the owner in fee and in the possession of certain lands in the State of Montana, described as follows, to wit:

Sections twenty-eight (28), twenty-nine (29), thirty-two (32), and thirty-three (33) of township numbered five (5) north, of range numbered eighteen (18) west, of the Montana meridian, in the Missoula land district, State and district of Montana.

The southeast one-fourth (¼) of the southeast one-fourth (¼), and the northwest one-fourth (¼) of section twenty (20), and section eighteen (18) of township three (3) north, of range twenty-one (21) west, of the Montana meridian, in the Missoula land district, State and district of Montana.

The southeast one-fourth (¼) of the southwest one-fourth (¼), and the southwest one-fourth (¼) of the southeast one-fourth (¼), and lot

4 seven (7) in section fourteen (14), and the northwest one-fourth (¼) of the northeast one-fourth (¼), and lot two (2) in section twenty-three (23), township three (3) north, of range twenty-one (21) west, of the Montana meridian, in the Missoula land district, State and district of Montana.

The southwest one-fourth (¼) of the northwest one-fourth (¼), and the northeast one-fourth (¼) of the southwest one-fourth (¼), and the northwest one-fourth (¼) of the southeast one-fourth (¼), and lot three (3) of section fourteen (14) of township three (3) north, of range twenty-one (21) west, of the Montana meridian, in the Missoula land district, State and district of Montana.

The northwest one-fourth (¼) of the southwest one-fourth (¼), and lots three (3), seven (7), and eight (8), in section twenty-five (25), and the southeast one-fourth (¼) of the northeast one-fourth (¼) in section twenty-six (26), township three (3) north, of range twenty-one (21) west, of the Montana meridian, in the Missoula land district, State and district of Montana.

The northeast one-fourth (¼) of the southeast one-fourth (¼) of section twenty-seven (27), township three (3) north, of range twenty-one (21) west, of the Montana meridian.

The northeast one-fourth (¼) of the northeast one-fourth (¼) of section nineteen (19), township two (2) north, of range twenty (20) west, of the Montana meridian.

The south one-half (½) of the southeast one-fourth (¼) and the

5 south one-half (½) of the southwest one-fourth (¼) of section twenty-one (21), township three (3) north, of range twenty-one (21) west, of the Montana meridian.

The west one-half (½) of the northeast one-fourth (¼) of section eighteen (18), township two (2) north, of range twenty (20) west, of the Montana meridian.

Lots one (1), four (4), and eight (8) in section twenty-three (23), and lot one (1) in section twenty-six (26), township three (3) north, of range twenty-one (21) west of the Montana meridian.

The north one-half (½) of the southeast one-fourth (¼) and the northeast one-fourth (¼) of the southwest one-fourth (¼) and the southeast one-fourth (¼) of the northwest one-fourth (¼) of section twenty-one (21), township three (3) north, of range twenty-one (21) west of the Montana meridian.

The south one-half (½) of the southeast one-fourth (¼) of section thirty-three (33) and the south one-half (½) of the southwest one-fourth (¼) of section thirty-four (34), in township two (2) north, of range twenty-one (21) west of the Montana meridian.

Section four (4), in township one (1) north, of range twenty-one (21) west of the Montana meridian.

The northeast one-fourth (¼) of section twenty-eight (28), in township two (2) north, of range twenty-one (21) west of the Montana meridian.

Township one (1) north, of range twenty-one (21) west of the Montana meridian.

6 The northeast one-fourth (¼) of the southeast one-fourth (¼) and the west one-half (½) of the southeast one-fourth (¼) and the southeast one-fourth (¼) of the southwest one-fourth (¼) of section twenty-seven (27), in township two (2) north, of range twenty-one (21) west of the Montana meridian.

The northwest one-fourth (¼) of section twenty-seven (27) and the west one-half (½) of the southeast one-fourth (¼) and the southeast one-fourth (¼) of the southwest one-fourth (¼) of section twenty-seven (27), in township two (2) north, of range twenty-one (21) west of the Montana meridian.

The northeast one-fourth (¼) of the southeast one-fourth (¼) of section eight (8), in township four (4) north, of range twenty-one (21) west of the Montana meridian.

Section eighteen (18) and the southeast one-fourth (¼) of the southeast one-fourth (¼) and the northwest one-fourth (¼) of section twenty (20), in township three (3) north, of range twenty-one (21) west of the Montana meridian.

Sections seven (7) and eighteen (18) and the west one-half (½) of the northwest one-fourth (¼) and the north one-half (½) of the southwest one-fourth (¼) and the north one-half (½) of the southeast one-fourth (¼) of section seventeen (17), in township four (4) north, of range twenty-one (21) west of the Montana meridian, and section thirteen (13), in township four (4) north, of range twenty-two (22) west of the Montana meridian.

Township one (1) north, of range twenty-one (21) west of the Montana meridian.

7 The southwest one-fourth (¼) and the west half (½) of the southeast one-fourth (¼) of section thirty-three (33), in township two (2) north, of range twenty-one (21) west of the Montana meridian.

The south half (½) of the northeast one-fourth (¼) and the northeast one-fourth (¼) of the southeast one-fourth (¼) of section twenty-eight (28), township four (4) north, of range twenty-one (21) west of the Montana meridian.

Section twenty-three (23), in township two (2) north, of range twenty-one (21) west of the Montana meridian.

The northeast one-fourth (¼) of the southeast one-fourth (¼) of section twenty-three (23), township three (3) north, of range twenty-one (21) west of the Montana meridian.

The southeast one-fourth (¼) of the northwest one-fourth (¼) of section twenty-seven (27), township three (3) north, of range twenty-one (21) west of the Montana meridian.

The northwest one-fourth of section twenty-eight (28) and the southeast one-fourth (¼) and the west one-half (½) of the southeast one-fourth (¼) and the southwest one-fourth (¼) of the northeast one-fourth (¼) and the northeast one-fourth (¼) of the northeast one-fourth (¼) of section twenty-one (21), of the northwest one-fourth (¼) of section twenty-two (22), of township two (2) north, of range twenty (20) west of the Montana meridian.

The north one-half (½) of the northwest one-fourth (¼) and the southwest one-fourth (¼) of the northwest one-fourth (¼) of section twenty (20) and the southeast one-fourth (¼) of the northeast one-fourth (¼) of
8 section nineteen (19), of township two (2) north, of range twenty (20) west of the Montana meridian.

The southwest one-fourth (¼) of the northwest one-fourth (¼) of section twenty-seven (27), township four (4) north, of range twenty-one (21) west of the Montana meridian.

The southwest one-fourth (¼) of section thirty-three (33), township three (3) north, of range twenty-one (21) west of the Montana meridian.

The southwest one-fourth (¼) of section twenty-two (22), township four (4) north, of range twenty-one (21) west of the Montana meridian.

The southeast one-fourth (¼) of the northwest one-fourth (¼) and the north one-half (½) of southwest one-fourth (¼) and the southwest one-fourth (¼) of the southwest one-fourth (¼) of section twenty (20), township two (2) north, of range twenty (20) west of the Montana meridian.

Sections twenty-three (23) and twenty-four (24), township two (2) north, of range twenty-one (21) west of the Montana meridian.

Section twenty-five (25), township two (2) north, of range twenty-one (21) west of the Montana meridian.

The west one-half (½) of the northwest one-fourth (¼) of section twenty-one (21), township two (2) north, of range twenty (20) west of the Montana meridian.

The south one-half (½) of the northeast one-fourth (¼) and the north one-half (½) of the southeast one-fourth (¼) of section twenty (20), township two (2) north, of range twenty (20) west of the Montana meridian.

9 The southwest one-fourth (¼) of the southeast one-fourth (¼), and the southeast one-fourth (¼) of the southeast (¼) of section twenty-two (22), and the northeast one-fourth (¼) of the northwest one-fourth (¼), and the northwest one-fourth (¼) of the northeast one-fourth (¼) of section twenty-seven (27), township two (2) north, of range twenty (20) west of the Montana meridian.

The east one-half (½) of the northeast one-fourth (¼) and the southeast one-fourth (¼) of section twenty-four (24), township two (2) north, of range twenty-one (21) west of the Montana meridian, and the west one-half (½) of the northeast one-fourth (¼), and lots one (1), two (2), and three (3) of section nineteen (19), and the west one-half (½) of the south-

east one-fourth (¼) of section eighteen (18), township two (2) north, of range twenty (20) west of the Montana meridian.

The north one-half (½) of the northeast one-fourth (¼) and the east one-half (½) of the northwest one-fourth (¼) of section twenty-seven (27), township four (4) north, of range twenty-one (21) west of the Montana meridian.

The northwest one-fourth (¼) of the southwest one-fourth (¼) of section twenty-seven (27), township four (4) north, of range twenty-one (21) west of the Montana meridian. All in the Missoula land district, State and district of Montana.

The southeast one-fourth (¼) of the southwest one-fourth (¼) and the southwest one-fourth (¼) of the southeast one-fourth (¼) and lot seven (7) of section fourteen (14), and the northwest one-fourth (¼) of the northeast one-fourth (¼) and lot two (2), township three (3) range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The north one-half (½) of the northwest one-fourth (¼) of section twenty-six (26) and the southeast one-fourth (¼) of the southwest one-fourth (¼) and the southwest one-fourth (¼) of the southeast one-fourth (¼) of section twenty-three (23), township two (2), range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The south one-half (½) of the southwest one-fourth (¼) and the northeast one-fourth (¼) of the southwest one-fourth (¼) and the southwest one-fourth (¼) of the southeast (¼) of section eleven (11), township four (4), range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The north one-half (½) of the southeast one-fourth (¼) and the north one-half (½) of the southwest one-fourth (¼) of section ten (10), range twenty-one (21), township four (4) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The northwest one-fourth (¼) of the southeast one-fourth (¼) and the southeast one-fourth (¼) of the northwest one-fourth (¼) of section eleven (11), township four (4), range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The northeast one-fourth (¼) of the northeast one-fourth (¼) of section fifteen (15), township four (4), range twenty-one (21) west of the
11 Montana meridian, in the county of Ravalli, State and district of Montana.

The east one-half (½) of the northwest one-fourth (¼) and the east one-half (½) of the southwest one-fourth (¼) of section twenty-eight (28), township six (6), range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The southeast one-fourth (¼) and the west one-half (½) of the southwest one-fourth (¼) and the southwest one-fourth (¼) of the northwest one-fourth (¼) of section three (3), township five (5), range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The southwest one-fourth (¼) of the northeast one-fourth (¼) and the southeast one-fourth (¼) of the northeast one-fourth (¼) of section fifteen

(15), township four (4), range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The west one-half (½) of the northeast one-fourth (¼), and the southeast one-fourth (¼) of the northeast one-fourth (¼), and the northeast one-fourth (¼) of the southeast one-fourth (¼) of section thirty-three (33), township six (6), range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The northeast one-fourth (¼) and the southeast one-fourth (¼) of section thirty-three (33) and the southwest one-fourth (¼) of section thirty-four (34), township six (6) north, of range twenty-one (21) west
12 of the Montana meridian, in the county of Missoula and State and district of Montana.

The southwest one-fourth (¼) of section fifteen (15), township five (5), range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

Lands in section two (2), township four (4) north, of range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The southwest one-fourth (¼) of the northwest one-fourth (¼) of section twenty-six (26) and the northwest one-fourth (¼) of the southwest one-fourth (¼) of section twenty-six (26), township two (2), range twenty-one (21) west of the Montana meridian, in the Missoula land district, State and district of Montana.

The southeast one-fourth (¼) of the southeast one-fourth (¼) of section thirty-four (34) and the west one-half (½) of the southwest one-fourth (¼) and the southwest one-fourth (¼) of the northwest one-fourth (¼) of section thirty-five (35), township two (2), range twenty (20) west of the Montana meridian, in the Missoula land district, State and district of Montana.

Land on the east fork of the Bitter Root River, and near what will be when the survey is accepted section twenty-seven (27), township two (2), range twenty (20) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

Lands being on the west fork of the Bitter Root River and which when surveyed will be in township one (1), range twenty-one (21)
13 west of the Montana meridian, in the Missoula land district, State and district of Montana.

The southwest one-fourth (¼) of the southeast one-fourth (¼), and the east one-half (½) of the southeast one-fourth of section twenty-seven (27), and the northwest one-fourth (¼) of section thirty-four (34), township three (3) north of range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The southeast one-fourth (¼) of the southwest one-fourth (¼), and the southwest one-fourth (¼) of the southeast one-fourth (¼), and lot seven (7), of section fourteen (14), and the northwest one-fourth (¼) of the northeast one-fourth (¼), and lot two (2) of section twenty-three (23), township three (3), range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The southwest one-fourth (¼) of the southwest one-fourth (¼) of section twenty-eight (28), township six (6), range twenty-one (21) west, and

the balance of land now claimed in said section twenty-eight (28), by Lee Hyatt, in the Missoula land district, State and district of Montana.

The west half (½) of the northwest one-fourth (¼) and the west half (½) of the southwest one-fourth (¼) of section twenty-eight (28), township six (6), range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The northwest one-fourth (¼) of section thirty-three (33), range
14 twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The southwest one-fourth (¼) of section fifteen (15), township five (5) north of range twenty-one (21) west of the Montana meridian, in the county of Missoula, State and district of Montana.

The southeast one-fourth of the southwest one-fourth (¼), and the south half (½) of the southeast one-fourth (¼) of section twenty-one (21), and the southwest one-fourth (¼) of the southwest one-fourth (¼) of section twenty-two (22), township two (2), range twenty (20) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The east side and adjoining the Bitter Root River in section two (2), township four (4) north of range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

Lands on the east side of the Bitter Root River, adjoining said river in section two (2), township four (4) north of range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

Lands situated in township two (2), range twenty (20) west of the Montana meridian, in the Missoula land district, State of Montana.

Forty acres in township two (2) north of range twenty-one (21) west, in section thirty-four (34); also one hundred and twenty (120) acres in section three (3), township one (1) north of range twenty-one (21) west, adjoining the west fork of the river, in the county of Ravalli, State and district of Montana.

15 The north one-half (½) of section seventeen (17), township one (1) north of range twenty-one (21) west; the southwest one-fourth (¼) of section twenty (20), township one (1) north of range twenty-one (21) west; the northwest one-fourth (¼) of section twenty (20), township one (1) north of range twenty-one (21) west; and the north one-half (½) of the northeast one-fourth (¼) of section thirty (30), township one (1) north of range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The southwest one-fourth of the southwest one-fourth (¼) of section thirty-four (34), and the south one-half (½) of the southeast one-fourth (¼) of section thirty-three (33), township two (2) north of range twenty-one (21) west, and the northeast one-fourth (¼) of the northeast one-fourth (¼) of section four (4), township one (1) north of range twenty-one (21) west of the Montana meridian, in the Missoula land district, State and district of Montana.

Lands situate, lying, and being in township one (1), range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

The north one-half (½) of the northwest one-fourth (¼) of section

twenty-six (26), and the southeast one-fourth (¼) of the southwest one-fourth (¼), and the southwest one-fourth (¼) of the southeast one-fourth (¼) of section twenty-three (23), township two (2), range twenty-one (21) west of the Montana meridian, in the county of Ravalli, State and district of Montana.

16 Lands situate, lying and being in sections twenty-five (25) and thirty (30), township one (1) north of range twenty-one (21) west, and township one (1) north of range twenty-two (22) west of the Montana meridian, in the Missoula land district, State and district of Montana.

Lands lying in the east side of the south fork of the Bitter Root River, in the Missoula land district, State and district of Montana, a more particular description of which said land is to your orator unknown.

The north one-half (½) of section four (4), township one (1) north of range twenty-one (21) west; the southeast one-fourth (¼) of the southeast one-fourth (¼) of section five (5), township one (1) north of range twenty-one (21) west; the northeast one-fourth (¼) of section eight (8), township one (1) north of range twenty-one (21) west; and the northwest one-fourth (¼) of section nine (9), township one (1) north of range twenty-one (21) west of the Montana meridian, in the Missoula land district, State and district of Montana.

Lands within the boundaries of the Bitter Root Forest Reserves and will be, when surveyed, in townships one (1) north and one (1) south, range twenty-two (22) west of the Montana meridian, in the Missoula land district, State and district of Montana.

Lands within the boundaries of the Bitter Root Forest Reserves and will be, when surveyed, in townships No. one (1) north, and No. one (1) south, range No. twenty-two (22) west of the Montana meridian, in the Missoula land district, State and district of Montana.

Unsurveyed lands as follows:

17 Lands lying on the East Fork of the Bitter Root River in township one (1) north, of range twenty (20) west, of the Montana meridian, and adjoining the claim of Herbert Lord on the East Fork of the Bitter Root River, in the Missoula land district, a more particular description of which said lands is to your orator unknown.

One hundred and sixty acres of unsurveyed land on the East Fork of the Bitter Root River, in the Missoula land district, State and district of Montana, a more particular description of which said land is to your orator unknown.

Lands situated about one mile east of White's Hot Springs, in a canyon about one-fifth of a mile wide and extending one-half of a mile along the East Fork of the Bitter Root River, in the Missoula land district, State and district of Montana.

One hundred and sixty acres of unsurveyed land on the main road from Darby to Sula, Montana, adjoining the East Fork of Bitter Root River and one and a half miles southeast of section thirty-four, township two (2) north of range twenty west of Montana meridian.

Lands situated about one mile east of Wile's Hot Springs, and extends one mile along both banks of the East Fork of Bitter Root River, in the Missoula land district, State and district of Montana, a more particular description of which said land is to your orator unknown.

One hundred and sixty acres on the main road from Darby to
18 Sula, Montana, and adjoining the East Fork of the Bitter Root River, and two miles southeast of section thirty-four (34), township two (2) north of range twenty (20) west of the Montana meridian, State and district of Montana, a more definite description of which said land is to your orator unknown.

One hundred and sixty acres on the main road from Darby to Sula, Montana, and adjoining the East Fork of the Bitter Root River, and two and one-half miles southeast of section thirty-four (34), township two (2) north of range twenty (20) west of the Montana meridian, in the Missoula land district, State and district of Montana, a more particular description of which said land is unknown to your orator.

A strip of unsurveyed land beginning one-fourth of a mile from squatter claim of T. W. Laird—that is, one-half mile south of W. P. Bean land in section thirty-four (34), township two (2) north of range twenty (20) west of the Montana meridian, and extending up Laird Creek that empties into the East Fork of Bitter Root River, and also on the mountain on the north side of said creek in the Missoula land district, State and district of Montana, a more definite description of which said land is to your orator unknown.

2. Your orator further shows that on the day and year last aforesaid, on these vast tracts of land there were then growing and standing great forests of pine, fir, and other kinds of trees of various dimensions, fit to manufacture into lumber for mining, commercial, and all other purposes for which lumber is used; that said forests were of great value, to wit,
of the value of two million dollars ($2,000,000) and upwards, the
19 exact value thereof being to your orator unknown; that these forests and the land upon which they were growing and standing were the absolute property of the complainant, the United States of America, and was a portion of its public domain.

3. Your orator further shows that on this the day of filing its bill of complaint in this court the lands above described have for the most part been stripped of the pine and other trees and timber that were standing and growing up them as aforesaid, and, except very small portions thereof, were so denuded without license, authority, or permission of the United States or anyone authorized to represent the complainant; and this was done in violation of its laws, both civil and criminal, and thereby and in consequence of said spoliation the complainant has lost millions of dollars' worth of its property under circumstances named in the succeeding paragraphs of this bill of complaint.

4. Your orator further shows that one Marcus Daly, who is now dead, but who was on the date and year aforesaid a citizen of the State of Montana, and a resident thereof, well knowing of the location of these lands, their accessibility, and the great value of the timber then growing thereon, did, on or about the 1st day of January, 1890, determine that he would convert and appropriate to his own use all of the merchantable and marketable timber growing and standing thereon, without buying said timber or obtaining any right or authority, except as hereinafter stated, from your orator, the United States of America. That in order
20 to more effectually carry out these designs and purposes, to conceal his identity, to enrich himself individually, to escape per-

sonal liability, and to better deceive the public and the lawful officers and agents of the complainant, he determined that he would organize a corporation under the laws of the State of Montana; and for that purpose the said Daly called to his aid and assistance certain other persons, namely, John R. Toole, William Toole, William W. Dixon, James W. Hamilton, Moses Kirkpatrick, William Scallon, Malcolm B. Bromley, Michael Donohue, William L. Hoag, Daniel J. Hennessy, and Joseph V. Long, and by conspiracy and confederation with said parties, and in pursuance of such fraudulent purpose as aforesaid, they organized, on or about the 12th day of August, 1890, the Bitter Root Development Company, the defendant. In its articles of incorporation, which were duly filed with the secretary of the State of Montana, said John R. Toole, William Toole, and James W. Hamilton were named as incorporators, and James W. Hamilton, William Toole, Daniel J. Hennessy, John R. Toole, and William W. Dixon were named as trustees to manage the affairs of the company for the first three months of its existence, and the town of Hamilton, in said State, was named as the principal office of said corporation. The capital stock of said corporation was fixed at the sum of three hundred thousand dollars ($300,000.00), divided into one hundred thousand shares, of the par value of three dollars ($3.00) per share.

5. Your orator further shows that said incorporators and trustees
21 had but a nominal interest in said corporation, but certain of them were agents, and others attorneys of said Marcus Daly, and as such conspired with him as to the manner and means by which his said purpose to denude said lands of your orator could be best carried out. In pursuance of such conspiracy it was necessary that a certain number should subscribe for stock in said corporation, which was done, but all of said shares were in fact subscribed for the use of and controlled by said Marcus Daly. Your orator charges that not only in the formation of said corporation and other corporations to be hereinafter named said John R. Toole, William Toole, William W. Dixon, James W. Hamilton, Moses Kirkpatrick, William Scallon, Malcolm B. Bromley, Michael Donohue, William L. Hoag, Daniel J. Hennessy, and Joseph V. Long aided and assisted said Marcus Daly, but in many other ways up to the time of his death they engaged with him in the work of spoliation, which, in pursuance of such conspiracy, had been planned and was later carried out as hereinafter particularly described; and said parties other than Daly participated in the profits thereof, but just how and to what extent is to your orator unknown; and your orator shows that such of the above as are not made defendants herein are either dead, outside of the jurisdiction of this court, or have no estate.

6. Your orator further shows that at once on the organization of this corporation, and under the corporate name thereof, said parties heretofore named commenced the work of cutting and carrying away from
22 said lands the trees and timber then growing and standing thereon, using at first in their operations several portable sawmills, but later, on or about the year 1892, a large lumber and sawmill was erected at the town of Hamilton, on Bitter Root River, in close proximity to a portion of the lands above described and the timber growing thereon. The work of cutting, hauling, transporting to the river, and driving the timber to said mill and manufacturing the same into lumber was prose-

cuted with great and unremitting industry for several years thereafter, to the great profit and advantage of the said conspirators and to the great loss of your orator.

7. Your orator further shows that not only at the time of the organization of said corporation, but at all times while it was doing business, its officers, directors, trustees, and stockholders acted for and in behalf of said Marcus Daly, as his agents, and had knowledge of its principal operations, and well knew that the logs that were being brought to its mill and converted into lumber were taken, without right or authority, from the public domain of your orator, and that they had no legal right or title to the same, except as to a small fraction thereof, as hereinafter stated.

8. Your orator further shows that in pursuance of such fraudulent conspiracy, for the purpose of carrying out the same, and in order to conceal such action, said Marcus Daly, aided by the other parties and as aforesaid, under the name of the Bitter Root Development Company,
23 did at certain times during the several years of said depredations apply to and obtain from the lawful agents of your orator licenses to cut upon certain small portions of the tracts above described, and under cover of such permits said conspirators not only cut, carried away, and manufactured the timber growing upon the lands included in such licenses, but well knowing that such permits gave them no right or authority to enter upon other lands of your orator, they willfully and fraudulently entered upon large tracts of lands adjacent thereto and cut, carried away, drove, and manufactured the timber growing thereon, and afterwards sold the lumber and timber to persons and corporations to your orator unknown and known only to said Marcus Daly, his said agents, and the officers of said Bitter Root Development Company, and appropriated the proceeds of such sales to their own use, but just when such sales were made, just how much the proceeds, to whom beside said Marcus Daly such proceeds were paid, in what proportion, in what way, and at what particular time, it is impossible for your orator to say, as all books of account, of every kind and character, were then and are now in their possession, under their control, or with their assigns.

9. Your orator further shows that in pursuance of said conspiracy, and in the execution thereof, in order to more effectually conceal the same from your orator, its officers and agents, the said Marcus Daly and the other parties before mentioned engaged the services of a large number of men, falsely representing that they had authority from your orator to
24 cut the growing timber on tracts of land not included in any license, and made contracts with such men by the terms of which the said conspirators were to pay a certain amount for logs delivered at the river bank by the parties so employed, by reason of which representations and contracts a large number of men were induced to cut down trees and haul them as logs to the river bank, and transport said logs to the company's mill at Hamilton, and thereby innocently aided the conspirators in their unlawful acts and enable them to successfully prosecute the same.

10. Your orator further shows that in pursuance of said conspiracy, and in the execution thereof, the said Daly and his associates, acting through and under the corporate name of the defendant, Bitter Root

Development Company, entered into other contracts or agreements with other parties, namely, Kendall Brothers, Harper Brothers, G. L. Shook, William Toole, Andrew Kennedy, D. V. Bean, John Ailport, and divers other persons to your orator unknown, by the terms of which they were to be paid specified prices per thousand feet board measure for logs delivered at the sawmill at Hamilton, both parties to said agreements well knowing at the time that the timber belonged to your orator and was to be unlawfully cut and removed. Said contractors, so called, acting for and in behalf of said Marcus Daly and his said confederates, under the name of the Bitter Root Development Company, during the year 1891 and for several years next thereafter, willfully trespassed upon the hereinbefore-described lands of the complainant, cutting millions of feet of logs and hauling them to the Bitter Root River, and thence to the mill
25 of the defendant, Bitter Root Development Company, at Hamilton, where they were converted into lumber and sold to the general public, and the proceeds thereof appropriated in large part by said Marcus Daly and the balance by his associates in said conspiracy, but just how much, and in what proportion, your orator, for the reasons above stated, is unable to say.

11. Your orator further shows that the said Marcus Daly and his associates in further execution of said conspiracy organized other corporations for the purpose of concealing their illegal acts and complicating and confusing the situation, so as to make detection and proof of the same difficult, if not impossible. One of these schemes was as follows: On or about the 14th day of January, 1891, they organized a corporation known as the Anaconda Mining Company, with an organized capital stock of $12,500,000, divided into 500,000 shares of the par value of $25 per share; that within less than one year thereafter, namely, on the 5th day of December, 1891, a stockholders' meeting was held in the city of Butte, Montana, and at said meeting the capital stock of said corporation was increased to twenty-five million dollars ($25,000,000.00) and the shares thereof increased to one million (1,000,000) shares; that at said stockholders' meeting it appeared that no one of the incorporators or the trustees that were named at the time of its incorporation a few months before had any substantial interest therein; and later, namely, on the 31st day of December, another meeting of said stockholders was held, at which time it was voted to extend the term of existence of said
26 corporation for forty years from the date of its original incorporation, and at that meeting it appeared that Marcus Daly, either in his own person or as trustee or as a proxy, controlled nearly seven hundred thousand (700,000) shares of the million shares of the capital stock of said company, and in less than six months thereafter the capital stock was reduced from twenty-five million dollars ($25,000,000.00) to one million dollars ($1,000,000.00) and the shares from one million (1,000,000) to forty thousand (40,000).

12. Your orator further shows that in furtherance of the conspiracy aforesaid the said Marcus Daly on the 27th day of April, 1894, through his agents procured to be conveyed unto himself all of the property of said Bitter Root Development Company, receiving a deed from said Bitter Root Development Company, executed by William Toole as its president and Joseph Kerrigan as its secretary, which said deed was duly

recorded on page 302 of book 16 in the proper office for the recording of deeds in the county of Ravalli, State of Montana. In said deed appear these words: "The Bitter Root Development Company, for and in consideration of one dollar, transfers all of its property of every kind and description, real and personal, timber lands, timber-cutting privileges and rights, timber, logs, mills, water rights, and water ditches, flumes, pipe lines, and rights of way—in fact, everything belonging to the Bitter Root Development Company—to Marcus Daly."

Your orator further says that four days after so receiving this
27 deed, namely, on the 1st day of May, 1894, said Marcus Daly deeded this same property to the other of his corporations, the above-named Anaconda Mining Company, for the express consideration of one million four hundred and forty-two thousand three hundred and seventy-nine dollars and forty-six cents ($1,442,379.46), which said deed was duly recorded in said book 16, on page 280. Your orator expressly charges that said Marcus Daly did in fact receive the consideration named in said deed, the whole thereof being directly the result of the spoliation of the lands of your orator as aforesaid, and that the moneys so received by him belonged in fact to your orator; but your orator charges on information that said Marcus Daly did not receive all of the same in cash, but a portion of same was taken in stock in said Anaconda Mining Company, but just how much he received in cash and how much was carried over and appeared in stock of said company your orator is unable to state.

13. Your orator further shows that in furtherance of the conspiracy aforesaid, said defendants, Moses Kirkpatrick, William Scallon, and Malcolm B. Bromley, acting for and in behalf of said Marcus Daly, on the 6th day of June, 1895, pursuant to and in conformity with the statutes of Montana relating to corporations for industrial and productive purposes, organized the Anaconda Copper Company, with an authorized capital stock of thirty million dollars ($30,000,000.00), divided into three hundred thousand (300,000) shares of the par value of one hundred dollars ($100.00) each, with an authorized term of existence of forty
28 years, and the following-named persons were named as trustees for the first three months of its existence, to wit, Moses Kirkpatrick, William Scallon, Malcolm B. Bromley, Michael Donohue, William L. Hoag, Daniel J. Hennessey, and Joseph V. Long, with its principal office at Butte, Silverbow County, Montana.

14. Your orator further shows that nine days thereafter the same persons, named as incorporators of the corporation last named, organized under the same law the defendant corporation, the Anaconda Copper Mining Company, with an authorized capital stock of thirty million dollars ($30,000,000.00), divided into one million two hundred thousand shares (1,200,000) of the par value of twenty-five dollars ($25.00) each, with the same seven trustees to manage the affairs of said corporation for the first three months of its existence, with its principal office at Anacond*da*, in said State.

15. Your orator shows that in the execution of said conspiracy, and for the purpose of complicating the situation, said Marcus Daly, through his agents, did again, and within one year and twenty-nine days after having transferred his property to the Anaconda Mining Company, convey the identical property that was named in said deeds to the above-

named Anaconda Copper Mining Company for and in consideration of the sum of one dollar, the Anaconda Mining Company executing a deed through and by its president, W. W. Dixon, and its secretary, F. E. Sergeant, and said deed is recorded in the same book of records on page 441.

16. Your orator further shows and charges that these several conveyances were made in the main in furtherance of said conspiracy, and in pursuance of a purpose to so complicate the situation as to make detection difficult, if not impossible. That the conveyance by the Bitter Root Development Company to said Marcus Daly, for one dollar, of all of its property was fraudulent, and that said Marcus Daly did, under the name of the Anaconda Mining Company, carry on the same work of spoliation of your orator's trees, timber, and lands, and that later, and from the time of the conveyance of all its corporate property to the Anaconda Copper Mining Company, he carried on the work under that name until the date of his death. That he continued to use the same means, the same mill at Hamilton, and the officers, directors, and stockholders of each of said corporations knew of the illegal work that had been done, and so knowing continued the same. And your orator expressly charges that all of the corporate assets of every kind and character of the Bitter Root Development Company either appeared in the stock of the other corporations or was appropriated by Marcus Daly and his assistants to their own use and benefit; but just how much was carried over in the said corporations, and how much was divided previous to the last deed named herein, and how much of the property of your orator was converted by said last-named company between the date of its organization and the death of said Marcus Daly hereinafter described, and how much thereof was appropriated by said company and how much by Daly and his associates, it is impossible for your orator, with the means at hand, to state.

17. Your orator further shows that by reason of such spoliation, continued and carried on during the period of about ten years, it has lost property of great value, to wit, of the value of two million dollars and upwards, and that Marcus Daly and the other defendants named herein occasioned this loss by willfully trespassing upon said lands of your orator, and without its consent, or the consent of any of its authorized officers, and in violation of its laws, both civil and criminal, appropriated and converted to their own use the trees and timber growing thereon. That said defendants, or some of them, have had at all times and now have possession of the sawmill at Hamilton, wherein the logs were converted into lumber, and they have received all the proceeds of said sales and divided the same among them; but by reason of the frauds practiced by said defendants, as aforesaid, and their acts performed for the express purpose of concealing from your orator the facts of the case by means of the formation and the dissolving and the re-forming of corporations, and by reason of said defendants having possession of all books of account it is impossible for your orator to set forth to a greater extent the details of this conspiracy, or to show just when or by whom the particular acts of spoliation were performed, or just when and to whom the logs when manufactured into lumber were sold, or just when and by whom the proceeds thereof were obtained and when the same were divided.

31 18. Your orator further shows that at the time that these trespasses were committed the territory on which the same took place was but sparsely settled, and was thousands of miles away from the seat of government, and it was impossible with the means that your orator had at hand to properly patrol and protect its domain from the willful trespasses of the defendants, and that the Government of the United States used such care in the protection thereof as it had the means to do. That the agents employed by your orator were misled by the defendants' assertion of ownership, as aforesaid; that the frauds and trespasses of the defendants, which have resulted in the denuding of these lands of your orator and in depriving your orator of property of the value of several millions of dollars, were not discovered in their entirety until a comparatively short time ago.

19. Your orator further shows that it has commenced several actions at law in this honorable court to recover the value of the timber heretofore taken by the defendants, or some of them, from the lands above particularly described, and that the same are now pending in this court, but that, by reason of the frauds and conspiracies above set forth and the complications which have resulted therefrom, no plain, adequate, and complete remedy can be given your orator by said actions at law, and your orator is only relievable in a court of equity, where matters of this kind are properly cognizable and relievable.

32 20. Your orator further shows that Marcus Daly died in the city of New York on the 12th day of November, A. D. 1900; that at the time of his death he was a resident of the county of Deerlodge, State and district of Montana, and left an estate worth about $12,000,000, consisting of real and personal property located in said county and State and elsewhere. And your orator expressly charges that a large portion of said estate was the result of the proceeds of his illegal acts in his lifetime in trespassing upon the lands of your orator, as hereinbefore charged, and converting the proceeds of the sale of the timber growing thereon to his own use and benefit; that in his lifetime he made and published his last will and testament whereby he appointed the defendant, Margaret P. Daly, executrix thereof; that on the 14th day of February, A. D. 1901, at the city of Anaconda, said last will and testament was duly proved and duly admitted to probate in the District Court of the county of Deerlodge, district of Montana; that thereupon, on the 15th day of February, A. D. 1901, letters of administration were duly issued thereon to the said defendant, Margaret P. Daly, by the said court; that the said defendant, Margaret P. Daly, duly qualified and entered upon the discharge of her duties as executrix, and that the said letters testamentary have not been revoked and are now in full force and effect.

21. Your orator further shows that the said Margaret P. Daly, under and by virtue of the terms of said will and as the wife of said Marcus Daly, is now the owner of a large portion of his estate.

33 In consideration whereof, and forasmuch as your orator is, for the reasons stated, remediless in the premises at and by the strict rule of the common law, and is only relievable in a court of equity where matters of this kind are properly cognizable and relievable, to the end that your orator may have that relief which it can only obtain in a court of equity; and that each one of the defendants above

named may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by your orator, your orator prays the court as follows:

First. That the defendant, Margaret P. Daly, both in her own person, and as executrix of the last will and testament of her husband, Marcus Daly, deceased, and each of the defendants above named, be decreed to hold in trust for the use and benefit of your orator so much of their estate, both real and personal, as shall have come to them, or either of them, directly from the proceeds of the conversion of the timber of your orator, as aforesaid.

Second. That the complainant have and recover from Margaret P. Daly, both personally and as executrix, and from each of the other defendants above named, the profits, gains, and advantages which the said defendants, or either of them, have received or made or which have arisen or accrued to them, or either of them, by reason of the willful trespasses upon the public domain of your orator, hereinbefore particularly described, and by reason of the fraudulent conversion of the trees and timber growing thereon, the logs had therefrom, and the lumber manufactured from the same.

Third. That each of the defendants may make a full and true
34 discovery and disclosure of and concerning the transactions and matters aforesaid, and that an accounting may be taken by and under the direction and decree of this honorable court of all the dealings and transactions between your orator and the defendants. That on such accounting the defendants and each of them be required to produce all licenses, permits, and all other documents of every kind and character which they, or any of them, may have received from your orator, by which they, or any of them, claim or claimed the right to enter upon any of said lands of your orator and cut and remove the trees and timber then growing thereon.

Fourth. That the defendants and each of them account for the number of logs received by them and manufactured into lumber at the sawmill at Hamilton, in said district, or at any other mill or mills owned or used by them in the manufacture of said logs into lumber, and also the gains, profits, and advantages which the said defendants, or either of them, or the estate of said Marcus Daly have received or made, or which have arisen or accrued to them, or either of them, from trespassing upon the lands of the complainant, above described and set forth, and in converting to their own use and benefit the trees and timber growing thereon.

Fifth. That the said defendants and each of them discover and
35 set forth full, true, and particular accounts of all and every sum or sums of money received by them, or either of them, or by any person or persons by their, or either of their, order, or for their, or either of their, use, for or in respect of the said sale or sales of logs cut from said lands of said complainant, or the lumber obtained from said logs, and when and from whom each and every of such sums were, respectively, received, and how the same, respectively, have been applied or disposed of, and to show when and where the proceeds of said sales were invested by each of said defendants, and in what form of real or personal estate they now exist.

Sixth. That the defendants, and each of them, may set forth a list or schedule and description of all books of account of every kind and char-

acter, and of all deeds, documents, letters, papers, or writings of every kind whatsoever relating to the matters aforesaid, or any of them, wherein or whereupon there is any note, memorandum, or writing relating in any manner thereto, which are now or ever were in their or either of their possession or power, and more particularly described, which now are in their or either of their possession or power, and may deposit the same with the clerk of this court or with the standing master in chancery thereof for the purposes of inspection and examination by your orator, and for all other legitimate and usual purposes, in order that your
36 orator may ascertain therefrom and thereby the particular facts and circumstances, which is absolutely necessary in order to enable your orator to obtain possession and knowledge of the details of this conspiracy; and that when such accounting shall be made, and it shall be ascertained that said defendants have received and taken into their possession money or other forms of property directly resulting from their participation in the conspiracy aforesaid, and in the spoliation of the lands of your orator as aforesaid, that this court shall decree that they pay the amount thereof, with interest from the date they so received the same, to your orator, with costs of this suit, and that your orator may have such other and further relief in the premises as the nature and the circumstances of this case may require and as may be agreeable to equity and good conscience.

May it please the court to grant to your orator a writ of subpœna to be directed to the said Margaret P. Daly; Margaret P. Daly, as executrix of the last will and testament of Marcus Daly, deceased; Bitter Root Development Company, Anaconda Mining Company, Anaconda Copper Company, Anaconda Copper Mining Company, John R. Toole, William W. Dixon, William Scallon, Daniel J. Hennessy, thereby commanding them, and each of them, at a certain time, and under a certain penalty to be fixed, personally to appear before this honorable court, and then and
37 there full, true, direct, and perfect answer to make to all and singular the premises, and to stand to, perform, and abide by such order, direction, and decree as may be made against them in the premises, as shall be meet and agreeable to equity, and your orator will ever pray.

T. C. KNOX,
Attorney-General of the United States.

J. K. RICHARDS,
Solicitor-General of the United States.

FRED A. MAYNARD,
Special Assistant United States Attorney, Solicitor for Complainant.

CARL RASCH,
United States Attorney and Solicitor for Complainant.

M. C. BURCH,
Of Counsel.

No. 207. The United States of America. The Circuit Court of the United States for the Ninth Circuit and District of Montana. In equity. The United States of America, complainant, vs. Bitter Root Development Company, a corporation; Anaconda Mining Company, a corporation; Anaconda Copper Company, a corporation; Anaconda Copper Mining Company, a corporation; Margaret P. Daly; Margaret P. Daly, as executrix of the last will and testament of Marcus Daly,

deceased; John R. Toole; William W. Dixon; William Scallon,
38 and Daniel J. Hennessy, defendants. Filed Feb. 26, 1903. Geo. W. Sproule, clerk.

And thereafter, to wit, on the 17th day of March, 1903, a subpoena in equity was issued herein, which is entered of final record, as follows, to wit:

Subpoena ad respondendum.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Judicial Circuit, District of Montana. In equi

The President of the United States of America, greeting, to Bitter Root Development Company, a corporation; Anaconda Mining Company, a corporation; Anaconda Copper Company, a corporation; Anaconda Copper Mining Company, a corporation; Margaret P. Daly; Margaret P. Daly, as executrix of the last will and testament of Marcus Daly, deceased; John R. Toole; William W. Dixon; William Scallon, and Daniel J. Hennessy, defendants.

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the court room in Butte, on the 6th day of April, A. D. 1903, to answer a bill of complaint exhibited against you in said court by the United States of America, complainant, and to do and receive what the said court shall have considered in that behalf. And this your are not to omit, under the penalty of five thousand dollars.

39 Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 26th day of February, in the year of our Lord one thousand nine hundred and three, and of our Independence, the 127th.

[SEAL.] GEO. W. SPROULE, *Clerk*,
By
Deputy Clerk.

Memorandum pursuant to rule 12, Supreme Court U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of April next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

[SEAL.] GEO. W. SPROULE, *Clerk*,
By
Deputy Clerk.

P. C. KNOX,
United States Attorney-General.

J. K. RICHARDS,
Solicitor-General.

F. A. MAYNARD,
Special Assistant United States Attorney,
Solicitor for Complainant.

CARL RASCH,
United States Attorney, Helena, Montana.

M. C. BURCH,
Of Counsel.

40 UNITED STATES MARSHAL'S OFFICE,
District of Montana.

I hereby certify that I received the within writ on the 28th day of February, 1903, and personally served the same on the 3d day of March, 1903, by delivering to, and leaving with D. J. Hennessy, at Butte, Mrs. M. Daly, March 4th; Mrs. M. P. Daly, as executrix of the last will and testament of M. Daly, deceased, at Anaconda, Wm. Scallon, at Butte, March 10th, 1903, and the Anaconda Copper Mining Co., by Wm. Scallon, Prest., and on J. R. Toole, March 16, 1903, at Anaconda, Mont., said defendants named therein personally, in said district, a copy thereof; after due search am unable to find the Bitter Root Development Co., Anaconda Mining Company, The Anaconda Copper Co., and W. W. Dixon in my district.

C. F. LLOYD,
United States Marshal,
By E. D. ELDERKIN, *Deputy.*

BUTTE, *March 17, 1903.*

(Endorsed:) No. 207. U. S. Circuit Court, Ninth Circuit, District of Montana. In equity. United States of America vs. Bitter Root Development Co. et al. Subpoena. Filed March 17th, 1903. Geo. W. Sproule, clerk.

And thereafter, to wit, on the 24th day of June, 1903, separate
41 demurrer of Anaconda Copper Mining Company, a corporation, John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy was filed herein, which is entered of final record, as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
BITTER ROOT DEVELOPMENT COMPANY (A CORPORATION); Anaconda Mining Company (a corporation); Anaconda Copper Company (a corporation); Anaconda Copper Mining Co. (a corporation); Margaret P. Daly; Margaret P. Daly, as executrix of the last will and testament of Marcus Daly, deceased; John R. Toole; William W. Dixon; William Scallon; and Daniel J. Hennessy, defendants.
No. 207.
In equity.

Separate demurrer of Anaconda Copper Mining Company, a corporation; John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy.

Now comes the Anaconda Copper Mining Company, a corporation; John R. Toole, William W. Dixon, William Scallon, and Daniel
42 J. Hennessy, defendants in the above-entitled suit, and not confessing or acknowledging all or any of the matters or things in complainant's bill of complaint contained to be true in such manner and

form as the same are therein set forth and alleged, do separately and for themselves an' each of them demur to the bill of complaint of complainant therein, and for causes of demurrer show:

I.

That the said bill of complaint does not state any such case as to entitle the complainant to any relief or discovery in equity, in that said bill shows that the complainant has a full, complete, and adequate remedy at law by action at law for the recovery of damages for the alleged wrongs of defendants, and also a full, adequate, and complete remedy for any discovery necessary or practicable by proceeding in such action at law.

II.

That the complainant is not entitled to any discovery herein because:

(1) The bill shows upon its face that the complainant has a full, complete, and adequate remedy at law, and is therefore not entitled to any discovery.

(2) That said bill charges that the alleged wrongful acts of the defendants were in violation of both the civil and criminal laws of the United States; and therefore defendants herein are not compellable to give any discovery herein or to answer said bill or to produce any papers, books, documents, or accounts relating to the matters and things stated
43 in said bill, because to do so might subject, or tend to subject, the defendants to a criminal prosecution or accusation or to a penalty or forfeiture.

(3) The bill alleges that some of the defendants were attorneys for some of the parties to this suit, and a discovery by such attorneys might compel them to violate professional confidences not allowed by law to be disclosed except under certain restrictions and conditions.

(4) The bill does not show that a discovery in this suit is sought in aid of any action at law, or that these defendants, or any of them, are parties to or defendants in an action at law relating to the matters set forth in the bill.

III.

The bill is so general, uncertain, and indefinite that it states no equitable grounds for relief or discovery, and these defendants should not be compelled to answer the same in that the bill does not show how any of the alleged acts of defendants were fraudulent, or how the complainant was injured, or how the complainant or its officers or agents were deceived or misled by any of the alleged acts of the defendants, or how any acts of the defendants complicated the situation or made detection difficult or impossible, or concealed from the complainant any facts in the case; nor is it sufficiently averred how said frauds were perpetrated or the alleged fraudulent acts committed; nor why the alleged frauds were not sooner discovered by the complainant, or how or when such frauds were
44 discovered or the means used to conceal the alleged frauds from the complainant; nor the diligence with which the alleged frauds were investigated by the complainant.

The bill contains mere loose, general, and indefinite allegations of fraud, and does not show the acts of the defendants by which the complainant alleges that it was deceived, misled, or injured by any acts of the defendants.

IV.

The bill shows upon its face that the complainant has been guilty of laches in not sooner commencing legal or equitable proceedings to enforce its alleged rights in that the alleged wrongs of the defendants were committed long since, and were within the knowledge of the complainant, or it had the means of knowledge thereof, and no sufficient reason or excuse is given or pleaded why the complainant has not long since availed itself of the proper legal and equitable remedies to which it might be entitled instead of delaying proceedings until, as shown by the bill, many of the parties having knowledge of the matters complained of have died or gone out of the jurisdiction of the court.

No diligence on the part of the complainant is shown, or any excuse for the want thereof, in relation to the matters stated in the bill.

V.

Said bill is uncertain and insufficient:

(1) As to the allegations of conspiracy and fraud on the part of
45 the defendants in that it is not shown what were the acts constituting the conspiracy and fraud, nor how the said alleged acts were fraudulent, or how the claimant was injured thereby, or how the complainant or its officers or agents were deceived or misled by any alleged acts of the defendants, or how any acts of the defendants complicated the situation or made detection difficult or impossible or concealed from the complainant any facts in the case.

The allegations are general and indefinite, and do not state how the alleged frauds were perpetrated or how the complainant was injured thereby, or when the complainant discovered the same, or that it used any diligence to discover them, or how the said frauds or any acts of the defendants were concealed from the complainant.

(2) It is alleged in the bill that the complainant has commenced several actions at law in this court to recover the value of timber taken by the defendants from the lands mentioned in the bill, and that the same are now pending in this court; but said actions are not described, nor the parties thereto named, nor is it alleged that these defendants, or any of them, are parties or defendants to such alleged actions at law, or any of them.

(3) The bill admits that the defendants, or some of them, had permits or licenses from the complainant or its agents to cut timber from some of the lands described in the bill; but the bill does not describe such permitted or licensed lands or exclude them from the bill, but seeks to hold the defendants liable for the timber cut from said permitted or
46 licensed lands, as well as from other lands, although knowledge of such licenses or permits was and is peculiarly within the knowledge of the complainant.

(4) Said bill is in many other respects uncertain, informal, and insufficient.

VI.

And for further causes to be stated at the hearing of this bill.

Wherefore these defendants separately demur to said bill and to all of the matters and things therein contained, and pray the judgment of this honorable court whether they shall be compelled to make any further or other answer thereto; and pray to be dismissed with their costs in this behalf sustained.

A. J. SHORES and
C. F. KELLEY,
Solicitors for said Defendants.

W. W. DIXON and
A. J. SHORES,
Of Counsel for said Defendants.

We certify that, in our opinion, the foregoing demurrer of the defendants, Anaconda Copper Mining Company (a corporation), John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy, to the bill of complaint of the United States of America is well founded in point of law and proper to be filed in said cause.

W. W. DIXON and
A. J. SHORES,
Of Counsel for said Defendants.

47 THE UNITED STATES OF AMERICA,
Ninth Circuit, District of Montana,
State of Montana, County of Silver Bow, ss:

William W. Dixon, being duly sworn, says that he is one of the defendants to the bill of complaint of the United States of America in this suit, that he has read the foregoing demurrer, and that the same is not interposed for delay.

WILLIAM W. DIXON.

Subscribed and sworn to before me this 22d day of June, 1903.

[SEAL.] WILL HARDCASTLE,
Notary Public in and for Silver Bow County, State of Montana.

Service of the foregoing demurrer acknowledged, and copy received this 24th day of June, 1903.

CARL RASCH,
United States Attorney, Solicitors for Complainant.

(Endorsed:) No. 207. Circuit Court, United States, Ninth Circuit, District of Montana. United States of America, complainant, vs. Bitter Root Development Co. (a corporation), Anaconda Mining Company (a corporation), et al., defendants. Separate demurrer of Anaconda Copper Mining Company (a corporation), John R. Toole, W. W. Dixon, Wm. Scallon, and Daniel J. Hennessy. Filed June 24, 1903. Geo. W. Sproule, clerk.

48 And thereafter, to wit, on the 1st day of August, 1903, Margaret P. Daly, and Margaret P. Daly as executrix of the last will and testament of Marcus Daly, deceased, filed her separate demurrer herein, which is entered of final record, as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES OF AMERICA, complainant,
vs.
BITTER ROOT DEVELOPMENT COMPANY (a corporation), Anaconda Mining Company (a corporation), Anaconda Copper Company (a corporation), Anaconda Copper Mining Co. (a corporation), Margaret P. Daly, Margaret P. Daly as executrix of the last will and testament of Marcus Daly, deceased, John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy, defendants.
No. 207. In equity.

Separate demurrer of Margaret P. Daly and Margaret P. Daly as executrix of the last will and testament of Marcus Daly, deceased.

49 Now comes Margaret P. Daly, for herself and as executrix of the last will and testament of Marcus Daly, deceased, defendants in the above-entitled suit, and not confessing or acknowledging all or any of the matters or things in complainant's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, does for herself, and as such executrix, demur to the bill of complaint of complainant herein, and for causes of demurrer shows:

I.

That the said bill of complaint does not state any such case as to entitle the complainant to any relief or discovery in equity, in that said bill shows that the complainant has a full, complete, and adequate remedy at law by action at law for the recovery of damages for the alleged wrongs of defendants, and also a full, adequate, and complete remedy for any discovery necessary or practicable by proceeding in such action at law.

II.

That the complainant is not entitled to any discovery herein bacause:
(1) The bill shows upon its face that the complainant has a full, complete, and adequate remedy at law, and is therefore not entitled to any discovery.
(2) That said bill charges that the alleged wrongful acts of the defendants were in violation of both the civil and criminal laws of the United States; and therefore defendants herein are not compellable to give any discovery herein, or to answer said bill, or to produce any papers, books,

documents, or accounts relating to the matters and things stated
50 in said bill, because to do so might subject, or tend to subject, the defendants to a criminal prosecution or accusation or to a penalty or forfeiture.

(3) The bill alleges that some of the defendants were attorneys for some of the parties to this suit, and a discovery by such attorneys might compel them to violate professional confidences not allowed by law to be disclosed except under certain restrictions and conditions.

(4) The bill does not show that a discovery in this suit is sought in aid of any action at law, or that these defendants, or any of them, are parties to, or defendants in, any action at law relating to the matters set forth in the bill.

III.

The bill is so general, uncertain, and indefinite that it states no equitable grounds for relief or discovery, and these defendants should not be compelled to answer the same, in that the bill does not show how any of the alleged acts of defendants were fraudulent, or how the complainant was injured thereby, or how the complainant or its officers or agents were deceived or misled by any of the alleged acts of the defendants, or how any acts of the defendants complicated the situation or made detection difficult or impossible, or concealed from the complainant any facts in the case; nor is it sufficiently averred how said frauds were perpetrated or the alleged fraudulent acts committed; nor why the alleged frauds were not sooner discovered by the complainant, or how or when such frauds were discovered, or the means used to conceal the alleged frauds
51 from the complainant; nor the diligence with which the alleged frauds were investigated by the complainant.

The bill contains mere loose, general, and indefinite allegations of fraud, and does not show the acts of the defendants by which the complainant alleges that it was deceived, misled, or injured by any acts of the defendants.

IV.

The bill shows upon its face that the complainant has been guilty of laches in not sooner commencing legal or equitable proceedings to enforce its alleged rights, in that the alleged wrongs of the defendants were committed long since and were within the knowledge of the complainant, or it had the means of knowledge thereof, and no sufficient reason or excuse is given or pleaded why the complainant has not long since availed itself of the proper legal and equitable remedies to which it might be entitled instead of delaying proceedings until, as shown by the bill, many of the parties having knowledge of the matters complained of have died or gone out of the jurisdiction of the court.

No diligence on the part of the complainant is shown, or any excuse for the want thereof, in relation to the matters stated in the bill.

V.

Said bill is uncertain and insufficient:

(1) As to the allegations of conspiracy and fraud on the part of the defendants, in that it is not shown what were the acts constitut-

52 ing the conspiracy and fraud, nor how the said alleged acts were fraudulent, or how the complainant was injured thereby, or how the complainant or its officers or agents were deceived or misled by any alleged acts of the defendants, or how any acts of the defendants complicated the situation, or made detection difficult or impossible, or concealed from the complainant any facts in the case.

The allegations are general and indefinite, and do not state how the alleged frauds were perpetrated, or how the complainant was injured thereby, or when the complainant discovered the same, or that it used any diligence to discover them, or how the said frauds or any acts of the defendants were concealed from the complainant.

(2) It is alleged in the bill that the complainant has commenced several actions at law in this court to recover the value of timber taken by the defendants from the lands mentioned in the bill, and that the same are now pending in this court; but said actions are not described, nor the parties thereto named, nor is it alleged that these defendants or any of them are parties or defendants to such alledged actions at law, or any of them.

(3) The bill admits that the defendants, or some of them, had permits or licenses from the complainant or its agents to cut timber from some of the lands described in the bill; but the bill does not describe such permitted or licensed lands, or exclude them from the bill, but seeks to hold the defendants liable for the timber cut from said permitted or licensed lands as well as from other lands, although knowledge of such
53 licenses or permits was and is peculiarly within the knowledge of the complainant.

(4) Said bill is in many other respects uncertain, informal, and insufficient.

VI.

And for further cause to be stated at the hearing of this bill.

Wherefore the defendant, Margaret P. Daly, for herself and as executrix of the last will and testament of Marcus Daly, deceased, separately demurs to said bill and to all of the matters and things therein contained, and prays the judgment of this honorable court whether she shall be compelled to make any further or other answer thereto, and prays to be dismissed with her costs in this behalf sustained.

A. J. CAMPBELL,
Solicitors for Said Defendants.

_____,
Of Counsel for Defendants.

I hereby certify that in my opinion the foregoing demurrer of the defendants, Margaret P. Daly, and Margaret P. Daly as executrix of the last will and testament of Marcus Daly, deceased, to the bill of complaint of the United States of America is well founded in point of law, and proper to be filed in said cause.

A. J. CAMPBELL,
Of Counsel for Said Defendants.

54 THE UNITED STATES OF AMERICA,
Ninth Circuit, District of Montana, State of Montana, County of Ravalli, ss:

Margaret P. Daly, being duly sworn, says: That she is one of the defendants to the bill of complaint of the United States of America in this suit; that she has read the foregoing demurrer, and that the same is not interposed for delay.

MARGARET P. DALY.

Subscribed and sworn to before me this 29th day of July, A. D. 1903.
[SEAL.] ROBERT A. O'HARA,
Notary Public in and for Ravalli County, State of Montana.

Service of the foregoing demurrer acknowledged, and copy received this 31st day of July, A. D. 1893.

A. J. CAMPBELL,
Solicitors for Complainant.

(Endorsed:) No. 207. In the Circuit Court of the United States, Ninth Circuit, District of Montana. In equity. The United States of America, complainant, vs. Bitter Root Development Company, a corporation, et al., defendants. Separate demurrer of Margaret P. Daly, and Margaret P. Daly as executrix of the last will and testament of Marcus Daly, deceased. Filed August 1, 1903. Geo. W. Sproule, clerk.

55 And thereafter, to wit, on the 26th day of February, 1904, an order sustaining said demurrers was duly made and entered herein, which is entered of final record, as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

Friday, February 26th, 1904. In open court.

UNITED STATES OF AMERICA
vs.
BITTER ROOT DEVELOPMENT COMPANY ET AL.

Order sustaining demurrers.

This cause heretofore submitted to the court upon demurrers of defendants, Anaconda Copper Mining Company, a corporation, John R. Toole, W. W. Dixon, Wm. Scallon, and Daniel J. Hennessy, and Margaret P. Daly, and Margaret P. Daly as executrix of the last will and testament of Marcus Daly, deceased, came on regularly at this time for the judgment and decision of the court; and after due consideration it is ordered that said demurrers be, and the same hereby are, sustained, and complainant thereupon granted five days' time within which to further plead or consider as to further action herein.

Attest: A true and correct copy.

GEO. W. SPROULE, *Clerk.*

56 And thereafter, to wit, on the 3d of March, 1904, a final decree was duly made and entered herein, which is entered of final record, as follows, to wit:

THE UNITED STATES OF AMERICA.

In the Circuit Court of the United States for the Ninth Circuit and District of Montana.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
BITTER ROOT DEVELOPMENT COMPANY (A CORPORATION); Anaconda Mining Company (a corporation); Anaconda Copper Company (a corporation); Anaconda Copper Mining Company (a corporation); Margaret P. Daly; Margaret P. Daly as executrix of the last will and testament of Marcus Daly, deceased; John R. Toole; William W. Dixon; William Scallon; Daniel J. Hennessy, and Anaconda Copper Company (a corporation), defendants. } In equity.

Final decree.

In this cause the demurrers of the said defendants, Margaret P. Daly, Margaret P. Daly as executrix of the last will and testament of Marcus Daly, deceased, Anaconda Copper Mining Company, a corporation,
57 John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy, to the said complainant's bill of complaint came duly on for hearing, and was argued by counsel for the respective parties, and the premises being seen and fully understood it is ordered, adjudged, and decreed by the court that said demurrers be and the same are hereby sustained; and the said complainant thereupon waiving in open court the right to further amend its said bill of complaint, it is thereupon further ordered, adjudged, and decreed by the court that said bill of complaint be and the same is hereby dismissed.

It appears from the return of the marshal that, after diligent search, no service of process could be had on said defendants, Bitter Root Development Company (a corporation), Anaconda Mining Company (a corporation), Anaconda Copper Company (a corporation), as they could not be found.

Dated March 3d, 1904.

HIRAM KNOWLES,
District Judge.

(Endorsed:) Title of court and cause. Order of dismissal. Filed and entered March 3d, 1904. Geo. W. Sproule, clerk.

Clerk's certificate to enrolled papers.

Wherefore, said pleadings, process, and final decree are entered of final record herein, in accordance with the law and practice of this court.

Witness my hand and the seal of said court this 3d day of March, 1904.

[SEAL.] GEO. W. SPROULE, *Clerk.*

58 And thereafter, to wit, on the 3d day of March, 1904, the complainant filed its assignment of error herein, which is in the words and figures as follows, to wit:

THE UNITED STATES OF AMERICA.

In the Circuit Court of the United States for the Ninth Circuit and District of Montana.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
BITTER ROOT DEVELOPMENT COMPANY (A CORPORATION); Anaconda Mining Company (a corporation); Anaconda Copper Company (a corporation); Anaconda Copper Mining Company (a corporation); Margaret P. Daly, Margaret P. Daly, as executrix of the last will and testament of Marcus Daly, deceased; John R. Toole; William W. Dixon; William Scallon, and Daniel J. Hennessy, defendants.
} In equity.

Assignment of errors.

And now comes the complainant and says that in the record and proceedings of the said court in the *the* above-entitled cause, and in the final decree made and entered therein, on the 26th day of February,
59 A. D. 1904, there is manifest error, and for error the said complainant assigns the following:

First. The court erred in that it did not hold that the bill of complaint states a good cause of action to which the defendants should be required to file their answers or pleas.

Second. The court erred in holding that the bill of complaint states no cause for relief in a court of equity.

Third. The court erred in refusing to grant the relief as prayed for in complainant's bill.

Fourth. The court erred in sustaining the demurrers of defendants Margaret P. Daly; Margaret P. Daly, as executrix of the last will and testament of Marcus Daly, deceased; Anaconda Copper Mining Company (a corporation); John R. Toole; William W. Dixon; William Scallon, and Daniel J. Hennessy, and directing that the bill of complaint be dismissed.

Fifth. The court erred in not overruling paragraph I of said demurrer, which states that the said bill of complaint does not state any such case as to entitle the complainant to any relief or discovery in equity, in that said bill shows that said complainant has a full, complete, and adequate remedy at law by action at law for the recovery of damages for the alleged wrongs of defendants, and also a full, adequate, and complete remedy for any discovery necessary or practicable by proceedings in such action at law.

Sixth. The court erred in not overruling paragraph II of said demurrer, which states that the complainant is not entitled to any discovery herein because:

60 (1) The bill shows upon its face that the complainant has a full, complete, and adequate remedy at law, and is therefore not entitled to any discovery.

(2) That said bill charges that the alleged wrongful acts of the defendants were in violation of both the civil and criminal laws of the United States; and therefore defendants herein are not compellable to give any discovery herein, or to answer said bill, or to produce any papers, books, documents, or accounts relating to the matters and things stated in said bill, because to do so might subject, or tend to subject, the defendants to a criminal prosecution or accusation or to a penalty or forfeiture.

(3) The bill alleges that some of the defendants were attorneys for some of the parties to this suit, and a discovery by such attorneys might compel them to violate professional confidences not allowed by law to be disclosed except under certain restrictions and conditions.

(4) The bill does not show that a discovery in this suit is sought in aid of any action at law, or that these defendants or any of them are parties to or defendants in any action at law relating to the matters set forth in the bill.

Seventh. The court erred in not overruling the third paragraph of said demurrer, which states that the bill is so general, uncertain, and indefinite that it states no equitable grounds for relief or discovery, and these defendants should not be compelled to answer the same, in
61 that the bill does not show how any of the alleged acts of defendants were fraudulent, or how the complainant was injured thereby, or how the complainant or its officers or agents were deceived or misled by any of the alleged acts of the defendants, or how any acts of the defendants complicated the situation or made detection difficult or impossible, or concealed from the complainant any facts in the case; nor that it is sufficiently averred how said frauds were perpetrated or the alleged fraudulent acts committed; nor why the alleged frauds were not sooner discovered by the complainant, or how or when such frauds were discovered or the means used to conceal the alleged frauds from the complainant; nor the diligence with which the alleged frauds were investigated by the complainant.

Eighth. The court erred in not overruling the fourth paragraph of said demurrer which states that the bill shows upon its face that the complainant has been guilty of laches in not sooner commencing legal or equitable proceedings to enforce its alleged rights, in that the alleged wrongs of the defendants were committed long since, and were within the knowledge of the complainant, or it had the means of knowledge thereof, and no sufficient reason or excuse is given or pleaded why the complainant has not long since availed itself of the proper legal
62 and equitable remedies to which it might be entitled instead of delaying proceedings until, as shown by the bill, many of the parties having knowledge of the matters complained of have died or gone out of the jurisdiction of the court.

No diligence on the part of the complainant is shown, or any excuse for the want thereof, in relation to the matters stated in the bill.

Ninth. The court erred in not overruling the fifth paragraph of said demurrer, which states that said bill is uncertain and insufficient:

(1) As to the allegations of conspiracy and fraud on the part of the

defendants, in that it is not shown what were the acts constituting the conspiracy and fraud, nor how the said alleged acts were fraudulent, or how the complainant was injured thereby, or how the complainant or its officers or agents were deceived or misled by any alleged acts of the defendants, or how any acts of the defendants complicated the situation, or made detection difficult or impossible, or concealed from the complainant any facts in the case.

That the allegations are general and indefinite, and do not state how the alleged frauds were perpetrated, or how the complainant was injured thereby, or when the complainant discovered the same, or that it used any diligence to discover them, or how said frauds or any acts of the defendants were concealed from the complainant.

(2) It is alleged in the bill that the complainant has commenced several actions at law in this court to recover the value of timber taken
63 by the defendants from the lands mentioned in the bill, and that the same are now pending in this court; but said actions are not described, nor the parties thereto named, nor is it alleged that these defendants or any of them are parties or defendants to such alleged actions at law, or any of them.

(3) The bill admits that the defendants, or some of them, had permits or licenses from the complainant or its agents to cut timber from some of the lands described in the bill; but the bill does not describe such permitted or licensed lands, or exclude them from the bill, but seeks to hold the defendants liable for the timber cut from said permitted or licensed lands as well as from other lands, although knowledge of such licenses or permits was and is peculiarly within the knowledge of the complainant.

(4) Said bill is in many other respects uncertain, informal, and insufficient.

Wherefore, the complainant prays that the said decree be reversed.

P. C. KNOX,
Attorney-General of the United States,
M. C. BURCH,
United States Attorney,
CARL RASCH,
United States Attorney for the District of Montana,
FRED A. MAYNARD,
Special Assistant United States Attorney for the District of Montana,
Solicitors for Complainant.

64 (Endorsed:) Title of court and cause. Assignment of errors. Filed and entered March 3d, 1904. Geo. W. Sproule, clerk.

And thereafter, to wit, on the 3d day of March, 1904, an order granting appeal was filed herein, being as follows, to wit:

UNITED STATES OF AMERICA.

Circuit Court of the United States for the District of Montana, Ninth Circuit.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
BITTER ROOT DEVELOPMENT COMPANY (A CORPORATION); Anaconda Mining Company (a corporation); Anaconda Copper Mining Company (a corporation); Anaconda Copper Company (a corporation); Margaret P. Daly; Margaret P. Daly, executrix of the last will and testament of Marcus Daly, deceased; John R. Toole, William W. Dixon; William Scallon, and Daniel J. Hennessy, defendants.
} In equity.

Order granting appeal.

The above-named complainant, conceiving itself aggrieved by
65 the decree made and entered on the 26th day of February, A. D. 1904, in the above-entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit of Appeals for the Ninth Circuit.

Dated March 3d, A. D. 1904.

P. C. KNOX,
Attorney-General of the United States.
M. C. BURCH,
United States Attorney.
CARL RASCH,
United States Attorney for the District of Montana.
FRED A. MAYNARD,
Special Assistant United States Attorney for the District of Montana, Solicitors for Complainant.

The foregoing claim of appeal is allowed.

HIRAM KNOWLES,
United States District Judge for the District of Montana.

(Endorsed:) Title of court and cause. Order granting appeal. Filed and entered March 3d, 1904. Geo. W. Sproule, clerk.

66 And thereafter, to wit, on the 3d day of March, 1904, a citation was duly issued herein, being in the words and figures as follows, to wit:

Citation.

THE UNITED STATES OF AMERICA, *ss:*

To Margaret P. Daly, Margaret P. Daly as executrix of the last will and testament of Marcus Daly, deceased, the Anaconda Copper Mining Company (a corporation), John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy, and Albert J. Campbell, solicitor for Margaret P. Daly and Margaret P. Daly, executrix, and W. W. Dixon, A. J. Shores, and C. F. Kelly, solicitors and of counsel for the other defendants.

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit in the city of San Francisco, State of California, on the 28th day of March, A. D. 1904, pursuant to an appeal on the part of the United States filed in the clerk's office of the Circuit Court of the United States for the District of Montana, entitled The United States of America, complainant, vs. Bitter Root Development Company (a corporation), Anaconda Mining Company (a corporation), Anaconda Copper Company (a corporation), Anaconda Copper Mining Company (a corporation), Margaret P. Daly, Margaret P. Daly as executrix of the last will and testament of Marcus Daly, deceased, John R. Toole, William W. Dixon, William Scallon,
67 and Daniel J. Hennessy, defendants to show cause, if any there be, why the decree of the Circuit Court of the United States in the said appeal mentioned should not be reversed and speedy justice should not be done in that behalf.

Given under my hand at the city of Butte, in the District of Montana, on the 2d day of March, A. D. 1904.

HIRAM KNOWLES,
District Judge.

Service of the above citation accepted by us this 3d day of March, A. D. 1904.

W. W. DIXON,
A. J. SHORES, and
C. F. KELLEY,
For the Anaconda Copper Mining Company, John R. Toole, W. W. Dixon, William Scallon, Daniel J. Hennessy.

A. J. CAMPBELL,
For Margaret P. Daly and Margaret P. Daly, executrix.

(Endorsed:) No. 107. In equity. Circuit Court of United States, 9th Circuit, Dist. of Montana. United States vs. Bitter Root Development Company et al. Citation. Filed March 3, 1904. Geo. W. Sproule, clerk.

Clerk's certificate to transcript.

UNITED STATES OF AMERICA,
District of Montana, ss:

I, George W. Sproule, clerk of the United States Circuit Court
68 for the District of Montana, do hereby certify and return to the honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 73 pages, numbered consecutively from 1 to 73, is a true and correct transcript of the pleadings, process, orders, decrees, and all proceedings had in said cause, and of the whole thereof, as appears from the original records and files of said court in my possession; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of twenty-one 10/100 dollars and has been charged to the appellant.

In witness whereof, I have hereunto set my hand and affixed the seal of the said United States Circuit Court for the District of Montana, at Helena, Montana, this 8th day of March, 1904.

[SEAL.] GEO. W. SPROULE, *Clerk.*

(Endorsed:) No. 1047. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, appellant, vs. Bitter Root Development Company (a corporation), Anaconda Mining Company (a corporation), Anaconda Copper Company (a corporation), Anaconda Copper Mining Company (a corporation), Margaret P. Daly, Margaret P. Daly as executrix of the last will and testament of Marcus Daly, deceased, John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy, appellees. Transcript of record. Upon appeal from the United States Circuit Court for the District of Montana. Filed March 14, 1904. F. D. Monckton, clerk.

69 United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE BITTER ROOT DEVELOPMENT COMPANY, a corporation, et al., appellees. } No. 1047.

Certificate of clerk U. S. Circuit Court of Appeals to printed transcript of record.

I, Frank D. Monckton, clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-eight (68) pages, numbered from one (1) to sixty-eight (68), inclusive, including the index and covers thereto, to be a true copy of the printed transcript of record upon appeal from the United States Circuit Court for the District of Montana in the above-entitled case, and that the same was printed under my supervision pursuant to the provisions of rule 23 of the rules of practice of the said the United States Circuit Court of Appeals for the Ninth Circuit.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, this 28th day of March, A. D. 1905.

[SEAL.] F. D. MONCKTON, *Clerk.*

70 *Proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit.*

71 At a stated term, to wit, the October term, A. D. 1903, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the court room, in the city and county of Francisco, on Thursday the twenty-sixth day of May, in the year of our Lord one thousand nine hundred and four.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable William W. Morrow, circuit judge.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
THE BITTER ROOT DEVELOPMENT COMPANY, a corporation, et al., appellees. } No. 1047.

Order of submission.

Ordered, appeal argued by Fred A. Maynard, esquire, counsel for the appellant, and L. O. Evans, esquire, counsel for the appellees, and submitted to the court for consideration and decision, with leave to counsel for the appellees to file further brief within five (5) days.

72 In the United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
BITTER ROOT DEVELOPMENT COMPANY (a corporation); Anaconda Mining Company (a corporation); Anaconda Copper Mining Company (a corporation); Margaret P. Daly; Margaret P. Daly as executrix of the estate of Marcus Daly, deceased; Jorn R. Toole; William W. Dixon; William Scallon; and Daniel J. Hennessy, appellees. } No. 1047.

Opinion U. S. Circuit Court of Appeals.

Appeal from the United States Circuit Court for the District of Montana.

The appellant was the complainant in a bill in equity filed in the Circuit Court of the United States for the District of Montana, against the appellees herein as defendants. The substance of the bill was as follows: That on April 1, 1888, the appellant owned certain public lands in the State of Montana, which are described in the bill, comprising many thousands of acres, some of which were surveyed, and others of which were unsurveyed; that on said date there were growing and standing on said

lands forest of pine and fir and other trees fit to manufacture into lumber, which standing timber was of the value of more than $2,000,000; that at the date of filing the bill said lands had for the most part been stripped of such timber, and except very small portions thereof were denuded of timber without license or authority or permission of the United States
73 or anyone authorized to represent the appellant, and that in consequence of such spoliation the appellant has lost millions of dollars' worth of its property; that one Marcus Daly, now deceased, a citizen and resident of the State of Montana, did on or about January 1, 1889, determine to convert and appropriate to his own use all the merchantable and marketable timber growing and standing on the said lands without buying the same or obtaining any right or authority except as in the bill hereinafter stated; that in order to carry out his designs and to conceal his identity and escape personal liability, and to deceive the public and the officers of the appellant, he, with the aid of certain named persons, on about August 12, 1890, organized, under the laws of the State of Montana, the Bitter Root Development Company, of which Jorn R. Toole, William Toole, and James W. Hamilton were named as incorporators, and they, and Daniel J. Hennessey and William W. Dixon were named as trustees to manage the affairs of the company for the first three months of its existence; that the capital stock of the corporation was fixed at the sum of $300,000; that said incorporators and trustees had but a nominal interest in the corporation, but certain of them were agents, and others attorneys, of said Marcus Daly, and with him they conspired to denude said lands of their timber; that all of the stock of said corporation was subscribed for the use of and controlled by the said Marcus Daly, and that said named persons, together with Moses Kirkpatrick, William Scallon, Malcomb B. Bromley, Michael Donohue, William L. Hoag, and Joseph B. Long, aided and assisted said Marcus Daly up to the time of his death in the work of spoliation which, in pursuance of said conspiracy, had been planned; that said parties other than Daly participated in the profits, but to what extent it is unknown to the appellant; that such of the said parties as are not made defendants to the bill are either dead or out of the jurisdiction of the court, or insolvent; that immediately upon the organization of the corporation, and under
74 the corporate name thereof, said parties so named commenced the work of cutting and carrying away from said lands the growing and standing timber thereon, using at first several portable sawmills and later a large lumber sawmill at the town of Hamilton, and carried on said work with unremitting industry for several years; that at all such times the officers, directors, trustees, and stockholders of said corporation acted for and in behalf of said Marcus Daly, as his agents, and had knowledge that said timber was being cut without right or authority from the public domain, except as to a small fraction thereof as hereinafter stated; that in pursuance of such fraudulent conspiracy and concealment of the same, the said conspirators, under the name of the Bitter Root Development Company, did at certain times during the several years of said depredations obtain from the appellant licenses to cut certain timber on small portions of the tracts in the bill described, and under cover of such permits they cut and carried away and manufactured not only the timber growing on the lands included in such licenses, but they willfully and fraudulently entered upon large tracts of land

adjacent thereto, and cut and carried away the timber growing thereon, and afterwards cut and sold the lumber to persons unknown to the appellant, but known only to said Daly and the officers and agents of said corporation; that they appropriated the proceeds of the same to their own use; that just when such sales were made, how much the proceeds were, to whom paid, in what proportion, and at what particular times, the appellant is unable to say; that in further execution of said conspiracy the said Daly and his associates organized other corporations, for the purpose of concealing their illegal acts and to make detection and proof of the same difficult, if not impossible; that on January 14, 1891, they organized the corporation known as the Anaconda Mining Company, with a capital stock of $12,500,000, divided into 500,000 shares; that on December 5, 1891, the capital stock of
75 said corporation was increased to $25,000,000; that at the stockholders' meeting at which this was done it appeared that no one of the incorporators or trustees that were named at the time of the incorporation had any substantial interest therein, and that on December 31st of that year another meeting of the stockholders was held, at which it was voted to extend the term of existence of said corporation for forty years. At that meeting it appeared that Marcus Daly, either in his own person or as trustee or by proxy, controlled over 700,000 of the million shares of said capital stock, and in less than six months thereafter said capital stock was reduced from $25,000,000 to $1,000,000, and the number of shares from 1,000,000 to 40,000; that in furtherance of said conspiracy the said Daly, on April 27, 1894, through his agents procured to be conveyed unto himself all the property of said Bitter Root Development Company; that in the deed of transfer it appeared that said company, for and in consideration of one dollar, transferred all its property of every kind and description, real and personal, timber lands, timber-cutting privileges, and rights, etc., in fact everything belonging to the Bitter Root Development Company to Marcus Daly; that four days later Daly deeded the same property to the Anaconda Mining Company for the express consideration of $1,442,379.46; that said Daly did in fact receive said named consideration, the whole thereof being the result of the spoliation of the lands of the appellant as aforesaid; that the money so received by him belonged in fact to the appellant, but that in fact said consideration was not all paid in cash, but a portion of the same was stock in said Anaconda Mining Company; but how much was cash and how much was stock the appellant is unable to state; that in furtherance of said conspiracy, on June 6, 1895, the defendants, Kirkpatrick, Scallon, and Bromley, acting for and in behalf of said Daly, organized under the laws of the State of Montana the Anaconda Copper Company, with an organized
76 capital stock of $30,000,000, consisting of 300,000 shares, and for the first three months of its existence the said Kirkpatrick, Scallon, Bromley, Donahue, Hoag, Hennessy, and Long were named as trustees; that nine days thereafter the same persons organized under the laws of said State the Anaconda Copper Mining Company, with an organized capital stock of $30,000,000, consisting of 1,200,000 shares, with the same set of trustees to manage its affairs for the first three months of its existence; that in the execution of said conspiracy, and for the purpose of complicating the situation, said Daly, through his agents, within one year and twenty-nine days after having transferred his prop-

erty to the Anaconda Mining Company, conveyed the identical property named in the deed to that corporation to the said Anaconda Copper Mining Company for and in consideration of the sum of one dollar; that these several conveyances were made in the main in furtherance of said conspiracy, and for the purpose of so complicating the situation as to make detection difficult, if not impossible; that the conveyance by the Bitter Root Development Company to Daly of all its property for the consideration of one dollar was fraudulent, and that the said Daly did in the name of the Anaconda Copper Mining Company carry on the same work of spoliation of the timber on said lands from the time of the conveyance of said property to said last-named corporation, until the date of his death; that he continued to use the same means and the same mill, and the officers, directors, and stockholders of each of said corporations knew of the illegal work that had been done, and so knowing continued the same; that all of the corporate assets of every kind and character of the Bitter Root Development Company either appeared in the stock of the other corporations or was appropriated by Daly and his assistants to their own use and benefit; but how much was carried over into the said corporations, and how much was divided previous to the last deed so referred to, and how much
77 of the property of the appellant was converted by said last-named corporation, and how much thereof was appropriated by said company and how much by Daly and his associates, it is impossible for the appellant to state; that by reason of such spoliation carried on during a period of about ten years, the appellant has lost property of the value of $2,000,000 and upwards, and that said Marcus Daly and the other defendants named in the bill occasioned this loss by wilfully trespassing on the lands of the appellant, without its consent, and in violation of law, and that they appropriated and converted to their own use the trees and timber growing thereon; that said defendants or some of them have at all times had, and now have, possession of the said sawmill, and they have received all proceeds from the sale of lumber, and divided the same among themselves; but by reason of the frauds so practiced, and their concealment, and by reason of said defendants having possession of all books of account, it is impossible for the appellant to set forth to a greater extent the details of the conspiracy, or to show when and by whom the particular acts of spoliation were performed, or just when and to whom the lumber was sold, or when and by whom the proceeds thereof were received; that owing to the sparsely settled condition of such lands and the imperfect means of the appellant to patrol and protect the same, said frauds and trespasses were not discovered until a comparatively short time before the filing of the bill.

The bill contains this averment: "Your orator further shows that it has commenced several actions at law in this honorable court to recover the value of the timber heretofore taken by the defendants, or some of them, from the lands above particularly described, and that the same are now pending in this court, but that by reason of the frauds and conspiracies above set forth, and the complications which have resulted therefrom, no plain, adequate, and complete remedy can be given
78 your orator by said actions at law, and your orator is only relievable in a court of equity, where matters of this kind are properly cognizable and relievable."

The bill further alleges that Marcus Daly died on the 12th day of November, 1900, and left estate of the value of about $12,000,000, in Montana and elsewhere; that a large portion of said estate was the result and proceeds of said illegal acts; that he died testate, having named the defendant, Margaret P. Daly, his executrix; that his will was duly admitted to probate in the District Court of the county of Deer Lodge, in Montana, and letters of administration were duly issued thereon to the said Margaret P. Daly, and that she is now the acting executrix; that said Margaret P. Daly, under and by virtue of the terms of said last will, is now the owner of a large portion of said estate.

The bill then prays for equitable relief: First, that Margaret P. Daly, both in her own person and as executrix, and each of the appellees, be decreed to hold in trust for the use and benefit of the appellant so much of their estate, both real and personal, as shall have come to them directly from the proceeds of the sale of said timber; second, that the appellant recover from said appellees the profits and gains and advantages which they have received or made by reason of said wilful trespasses and fraudulent conversion of said timber; third, that each of said appellees make a full and true discovery and disclosure of and concerning the transactions aforesaid, and that an accounting be taken of all said dealings between the appellant and the appellees; that on said accounting the appellees be required to produce all licenses, permits, and all other documents of every kind and character, which they may have received from the appellant, or by which they claim the right to enter upon any of said lands, or to cut the timber therefrom; fourth, that they account for the number of logs re-
79 ceived by them and manufactured into lumber at their said mill, or at any other mill owned or used by them; also the gains, profits, and advantages which have accrued to them from trespassing on said lands and converting said timber to their own use; fifth, that they account for all sums received on sales of such timber; sixth, that they set forth a list and description of all books of account, deeds, stock books, letters, papers, or writings relating to the matters aforesaid, or any of them, and that they deposit the same with the clerk of the court for the purpose of inspection by the appellant and for all other legitimate and usual purposes; that upon such accounting the appellees be required to pay to the appellant all money derived by them from their participation in the conspiracy aforesaid, with interest thereon, and for such further relief as pertains to equity.

A demurrer was interposed to the bill for want of equity, and upon the further ground that the complainant therein had a full, complete, and adequate remedy at law for the recovery of damages for the alleged wrongs, and also a full, complete, and adequate remedy at law for any discovery necessary or practicable in aid of an action at law.

P. C. Knox, Attorney-General; M. C. Burch, Special Assistant Attorney-General; Carl Rasch, U. S. district attorney; Fred A. Maynard, special assistant U. S. attorney, for appellant.

W. W. Dixon, A. J. Campbell, A. J. Shores, C. F. Kelley, John F. Forbis, and L. O. Evans, solicitors for appellees.

Before Gilbert, Ross, and Morrow, circuit judges.

80 Gilbert, circuit judge, after stating the case as above, delivered the opinion of the court.

The bill sets forth a series of trespasses, continuing over a period of some ten years, which are alleged to have been committed by all of the defendants jointly. The appellant had its remedy in such a case by an action of trespass to recover damages based upon the value of the standing timber when taken or, if the trespass was knowingly and wrongfully committed, by an action in the nature of trover to charge the appellees with the value of the timber as manufactured into lumber. Woodenware Co. v. United States, 106 U. S., 432. But the appellant, while admitting that it has a remedy at law to obtain redress for the acts complained of, denies that such remedy is as plain, speedy, or adequate as the remedy afforded by a suit in equity. The inadequacy of the legal remedy is said to consist in the trouble and difficulty of unraveling before a jury the devious and confusing methods adopted by the appellees in creating corporations and in transferring property from one to the other thereof, and other devices to cover their tracks, and that these methods and devices may only be brought to light through an inspection of the books and records of those corporations. It is not denied that inspection of all of these books and records may be obtained in an action at law, but the contention is that it would be more convenient to present such complicated evidence in a suit in equity. But the greater convenience of the equitable remedy is no ground in itself for resorting to equity, or for depriving a party of his constitutional right to a jury trial. The controlling consideration is whether the equitable remedy will afford more complete or effectual relief in kind or degree than the legal remedy. If the remedy at law is "as practical and efficient to the ends of justice and its prompt administration as the remedy in equity," it must be pursued. Insurance Company v. Bailey, 13 Wall., 616; Buzard v.
81 Huston, 119 U. S., 347, and cases there cited; Scott v. Neely, 140 U. S., 106, 110.

It is contended that the bill presents several grounds for equitable relief, one of which is the jurisdiction of a court of equity in matters of accounting. This, it is true, is one of the established grounds of equitable jurisdiction in cases where it is shown that an accounting can not be fairly and adequately had in a court of law, or where there are fiduciary relations between the parties, or where the accounting is incident to recognized equitable relief sought by the bill. But there are no accounts in this case between appellant and appellees. The cause of action, as set forth in the bill, arises wholly in tort. A cause of action arising in tort can not be converted into a cause of action on an account at common law. Sandeen v. K. Cy. & St. Jo. R. R. Co., 79 Mo., 278; Albertson v. Grier, 4 Houst. (Del.), 541; Western & Atlantic R. R. Co. v. Mead & Co., 4 Snead, 107; Spencer v. Hewitt, 22 Ga., 426; A. T. & S. F. R. R. Co. v. Wilkinson, 55 Kas., 83. Nor can the appellant, by resorting to equity, convert its cause of action which arises on the facts disclosed in the bill into a suit in equity for an accounting. In addition to this, no facts are alleged in the bill to show the necessity for an accounting. It is not alleged in the bill that an accounting is necessary to enable the appellant to ascertain the quantity of timber that has been wrongfully cut from the premises described therein. It is not even alleged that the desired accounting will develop such proof, nor is it alleged that the appellees

cut no timber from lands other than those so described, or that they received no logs from other sources. The prayer of the bill in this connection is that the plaintiff recover from the defendants the profits, gains, and advantages which they have received or made by reason of the said trespasses and conversion of timber so cut. The relief so prayed for is not obtainable upon the facts alleged by any form of suit or action. The right of the appellant is confined to damages for trespass, or dam-
82 ages recoverable in an action in the nature of trover, in an amount to be based upon the actual value of the manufactured product, and not upon the basis of the amounts, gains, and profits received by the appellees.

But it is said that the bill presents a case of mutual accounts. This is asserted upon the theory that the appellant had granted to the appellees licenses to cut timber on small portions of the tracts described in the bill, of which licenses the appellees took advantage to wrongfully cut timber from adjacent lands. How this presents a case of mutual accounts, we are unable to see. The acts with which the appellees are charged are a series of torts. As to the lands on which licenses were given to cut timber, no demand for damages for such cutting can arise in favor of the appellant, and as to those lands no relief is sought. Those transactions can occupy no place in an accounting.

It is claimed that the bill may be sustained on the ground that it is brought to establish a trust. The cases of Newton v. Porter, 69 N. Y., 133, and The American Sugar Refining Co. v. Fancher, 145 N. Y., 552, are cited to sustain the doctrine that such a trust may arise through a tort. In the first of those cases it was held that the owner of negotiable securities stolen and afterwards sold by the thief might follow and claim the proceeds in the hands of a felonious taker, and that this right attached to any securities or property in which the proceeds may have been invested, so long as such proceeds can be traced and identified. But in that case the original tort feasor was insolvent. There was no remedy at law. No redress was possible unless the owner could proceed in equity to charge with a trust the property in which the stolen securities were invested. So in the case of The American Sugar Refining Co. v. Fancher, the sale of personal property had been induced by fraud on the part of the vendee, and the property was by him sold to another.
83 The proceeds of the sale were specifically identified in the hands of the latter. Since the vendee was wholly insolvent, it was held that a court of equity had a remedy to reach such proceeds and apply them for the benefit of the defrauded vendor. No such facts are presented in the present case. It is not alleged that any of the defendants are insolvent. On the contrary, it is shown that the estate of Marcus Daly, who, according to the allegations of the bill, was the initiator and principal actor in all the trespasses so complained of, and who, as one of the joint tort feasors, would be chargeable with the whole of the damages recoverable on account thereof, amounts to $12,000,000. Nor is it alleged in the bill that the profits fraudulently obtained by the appellant through the tort complained of have been invested or are now discoverable in any particular form of property which might be charged with a trust in invitum.

It is said that on the allegations of the bill the appellant is entitled to a discovery. But the appellant's remedy having been, as we have seen, an action at law, there is no necessity for resorting to equity to procure discovery in aid thereof. It has been held that in ordinary cases a pure bill of discovery can not be maintained in the equity courts of the United States for the reason that section 724 of the Revised Statutes renders it no longer necessary. Ex parte Boyd, 105 U. S., 647; Rindskopf v. Platto, 29 Fed., 130; United States v. McLaughlin, 24 Fed., 823; Preston v. Smith, 26 Fed., 885; Paton v. Majors, 46 Fed., 210. Section 724 of the Revised Statutes enables a plaintiff in an action at law to obtain in that action all discovery of books, papers, and documents as fully as it could be done in a suit in equity. Again, it is the settled rule that the Federal courts are without jurisdiction of a suit for the discovery of evidence to be used in the enforcement of a legal demand. In Scott v. Neely, 140 U. S., 106, the court said: "The Constitution in its seventh amendment declares that in suits at common law where the value
84 in controversy shall exceed twenty dollars the right of trial by jury shall be preserved. In the Federal courts this right can not be dispensed with except by the assent of the parties entitled to it, nor can it be impaired by any blending with a claim, properly cognizable at law, of a demand for equitable relief in aid of the legal action or during its pendency. Such aid in the Federal courts must be sought in separate proceedings, to the end that the right to a trial by jury in the legal action may be preserved intact." In Safford v. Ensign Mfg. Co., 56 C. C. A., it was held that a Federal court is without jurisdiction of a suit in which discovery and relief are sought; but the only ground for equitable relief appears to be the discovery of evidence to be used in the enforcement of a purely legal demand.

It is contended that the bill may be sustained for the reason that Margaret P. Daly is sued as executrix of the estate of Marcus Daly, deceased. It is true that courts of equity have exercised jurisdiction over controversies in which executors and administrators are parties defendant. But it is only in cases where such personal representatives are to be considered trustees for the heirs, legatees, devisees, or creditors. According to the allegations of the bill, Margaret P. Daly is not a trustee for the appellant. The appellant presents a claim for unliquidated damages. Margaret P. Daly is made a party defendant only for the reason that she is the personal representative of Marcus Daly, who was the principal tort feasor, according to the averments of the bill. She has the same right to a trial by jury that her husband would have had, if living. There was no charge of fraud against Margaret P. Daly, as executrix, and no discovery of the assets of the estate in her hands is required. According to the bill, she is possessed of ample funds to meet the
85 whole of the demand of the appellant.

The decree of the Circuit Court is affirmed.

(Endorsed:) Opinion. Filed Nov. 7, 1904. F. D. Monckton, clerk.

86 United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
THE BITTER ROOT DEVELOPMENT COMPANY, A CORPORATION; The Anaconda Mining Company, a corporation; The Anaconda Copper Company, a corporation; The Anaconda Copper Mining Company, a corporation; Margaret P. Daly; Margaret P. Daly, as executrix of the last will and testament of Marcus Daly, deceased; John R. Toole; Willliam W. Dixon; William Scallon; and Daniel J. Hennessy, appellees. } No. 1047.

Decree U. S. Circuit Court of Appeals.

Appeal from the Circuit Court of the United States for the District of of Montana.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the district of Montana, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed.

(Endorsed:) Decree. Filed and entered November 7, 1904. F. D. Monckton, clerk.

87 United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
BITTER ROOT DEVELOPMENT COMPANY, A CORPORATION; Anaconda Mining Company, a corporation; Anaconda Copper Company, a corporation; Anaconda Copper Mining Company, a corporation; Margaret P. Daly; Margaret P. Daly, as executrix of the last will and testament of Marcus Daly, deceased; John R. Toole; William W. Dixon; William Scallon; and Daniel J. Hennessy, appellees.

The above-mentioned appellant, United States of America, respectfully shows that the above-entitled cause is now pending in the United States Circuit Court of Appeals for the Ninth Circuit, and that a judgment has therein been rendered on the 7th day of November, A. D. 1904, affirming the decree of the Circuit Court of the United States for the district of Montana, and that the matter in controversy in said suit exceeds one thousand dollars besides costs; that this cause is one in which the United States Circuit Court of Appeals for the Ninth Circuit has not the power to enter final decrees or judgments, but it is a cause embraced within the last clause of section 6 of the judiciary act of March 3, 1891, and which provides as follows: "In all cases not hereinbefore, in this section, made final there shall be of right an appeal or writ of error, or review of the case by the Supreme Court of the United States,

where the matter in controversy shall exceed one thousand dollars besides costs."

88 Wherefore the said appellant prays that an appeal be allowed it in the above-entitled cause, directing the clerk of the United States Circuit Court of Appeals for the Ninth Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellant may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

WILLIAM H. MOODY,
Attorney-General of the United States.
M. C. BURCH,
Sp'l Ass't Atty. General of the United States.
CARL RASCH,
U. S. Attorney for the District of Montana.
FRED A. MAYNARD,
Special Ass't U. S. Atty. for the District of Montana.

Dated March 3d, 1905.

(Endorsed:) Prayer for appeal to the Supreme Court of the U. S. Filed March 13th, 1905. F. D. Monckton, clerk.

89 United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED OF AMERICA, APPELLANT,
vs.
BITTER ROOT DEVELOPMENT COMPANY, a corporation; Anaconda Mining Company, a corporation; Anaconda Copper Company, a corporation; Anaconda Copper Mining Company, a corporation; Margaret P. Daly; Margaret P. Daly as Executrix of the Last Will and Testament of Marcus Daly, deceased; John R. Toole, William W. Dixon, William Scallon, and Daniel J. Hennessy, appellees.

Assignment of errors.

And now comes the appellant, the United States of America, and says that in the record and proceedings of the said court in the above-entitled cause, and in its final judgment affirming the decree of the Circuit Court for the District of Montana, made and entered therein on the 7th day of November, A. D. 1904, there is manifest error, and that the United States Circuit Court of Appeals for the Ninth Circuit erred in this, to wit:

First. In holding and deciding that the bill of complaint states no cause for relief in a court of equity.

Second. In refusing to grant the relief as prayed for in complainant's bill.

Third. In affirming the decree of the Circuit Court for the District of Montana, which decree sustained the demurrers to the bill interposed by the defendants, one of which said demurrers was that the bill shows that the complainant has a full, complete, and adequate remedy at law.

90 Fourth. In holding and deciding that complainant's remedy at law is "as practical and efficient to the ends of justice and its prompt administration as the remedy in equity."

Fifth. In holding and deciding that the bill of complaint shows that there are no accounts in this case between the parties thereto, but that the cause of action as set forth in the bill arises wholly in tort.

Sixth. In holding and deciding that no facts are alleged in the bill to show the necessity for an accounting.

Seventh. In holding and deciding that it is not alleged in the bill that an accounting is necessary to enable the appellant to ascertain the quantity of timber that has been wrongfully cut from the premises described therein.

Eighth. In holding and deciding that the allegations of complainant's bill as contained in its eighth paragraph as follows: "That said Marcus Daly aided by the other parties, as aforesaid, under the name of the Bitter Root Development Company, did at certain times during the several years of said depredations, apply to and obtain from the lawful agents of your orator licenses to cut upon certain small portions of the tracts above described and under cover of said permits, said conspirators not only cut, carried away and manufactured the timber growing upon the lands included in such licenses, but well knowing that such permits gave them no right or authority to enter upon other lands of your orator, wilfully and fraudulently entered upon large tracts of land adjacent thereto, and cut, carried away, drove and manufactured the timber growing thereon, and afterwards sold the lumber and timber to persons and corporations to your orator unknown, and known only to said Marcus Daly, his said agents, and the officers of said Bitter Root Develop-
91 ment Company, and appropriated the proceeds of such sales to their own use, but just when such sales were made, just how much the proceeds, to whom besides said Marcus Daly such proceeds were paid, in what proportion, in what way, and at what particular time, it is impossible for your orator to say, as all books of accounts of every kind and character were then, and are now, in their possession, under their control or with their assigns, when read in connection with the third prayer of complainant's bill, "That each of the defendants make a full and true discovery and disclosure of and concerning the transactions and matters aforesaid, and that an accounting may be taken by and under the direction and decree of this Honorable Court of all the dealings and transactions between your orator and the defendants. That on such accounting the defendants and each of them be required to produce all licenses, permits, and all other documents of every kind and character which they or any of them, may have received from your orator, by which they, or any of them, claim or claimed the right to enter upon any of said lands of your orator and cut and remove the trees and timber then growing thereon," does not state a case cognizable in equity, and no necessity for an accounting, "as the acts charged are simply a series of torts."

Ninth. In so holding and deciding the court erred in that it wholly ignored and refused or neglected to consider the act of Congress under which said licenses or permits were issued, and the rules and regulations of the Secretary of the Interior as contained in and made a part of said licenses or permits, which, among others, expressly provide that the

holders of such licenses or permits shall report to the proper land officers of the United States, and account each month to them for the timber so cut under such permits or licenses.

92 Tenth. The court erred in refusing to hold that on a case as presented by the facts set forth in the bill the law will raise a trust in invitum out of the transaction, in order that the substituted property resulting from the proceeds of said acts may be subjected to the purposes of indemnity and recompense; and that in such a case equity is the proper forum.

Eleventh. The court erred in not holding and deciding that it is evident from the facts stated in the bill, that the timber belonging to the Government having been converted into money by the defendants, and by them invested in so many different ways, and so many varied interests and so many complications having resulted from their fixed purpose to make detection impossible, that it is evident that the matter is beyond the reach of any strict legal remedy, and only within the comprehensive scope of a bill in equity where all the parties can be brought in and every right protected, so as to adjust and determine the entire merits of the case.

Twelfth. The court erred in not holding and deciding that the complainant was entitled to the discovery sought and prayed for in its bill.

Thirteenth. The court erred in decreeing that the defendant, Margaret P. Daly, both in her own person and as executrix of the last will and testament of said Marcus Daly, deceased, is not, and, according to the allegations of the bill, could not be charged and held as a trustee for the use and benefit of the United States for so much of the estate of said Marcus Daly as shall have come to her directly from the proceeds of the conversion by said Marcus Daly of timber belonging to the United States.

93 Fourteenth. The court erred in decreeing that the other defendants named in the bill of complaint are not and could not, according to the allegations of the bill, be charged and held as trustees for the use and benefit of the United States for so much of the proceeds of said conversion as shall have come to each one of them.

Fifteenth. The court erred in holding and deciding that the appellant is not authorized to invoke the aid of equity by reason of the frauds practiced by Marcus Daly and his assistants.

Wherefore the said appellant prays the honorable court to examine and correct the errors assigned, and for a reversal of the judgment and decree of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above-entitled case.

WILLIAM H. MOODY,
Attorney-General of the United States,
M. C. BURCH,
Spl. Asst. Atty. General of the U. S.,
CARL RASCH,
U. S. Attorney for the District of Montana,
FRED A. MAYNARD,
Special Asst. U. S. Atty. for the Dist. of Montana,
Attorneys for Appellant.

Dated, March 3rd, 1905.

(Endorsed:) Assignment of errors. Filed March 13th, 1905. F. D. Monckton, clerk.

94 United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
BITTER ROOT DEVELOPMENT COMPANY, A CORPORATION; Anaconda Mining Company, a corporation; Anaconda Copper Company, a corporation; Anaconda Copper Mining Company, a corporation; Margaret P. Daly; Margaret P. Daly, as executrix of the last will and testament of Marcus Daly, deceased; John R. Toole; William W. Dixon; William Scallon; and Daniel J. Hennessy, appellees.

It is hereby ordered that the appeal in the above-entitled case to the Supreme Court of the United States be and is hereby allowed as prayed.

WM. B. GILBERT,
United States Circuit Judge, Ninth Circuit.

Dated March 11th, 1905.

(Endorsed:) Order allowing appeal. Filed March 13th, 1905. F. D. Monckton, clerk.

95 United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE BITTER ROOT DEVELOPMENT COMPANY, A corporation, et al., appellees.
No. 1047.

Certificate of clerk U. S. Circuit Court of Appeals to proceedings, etc.

I, Frank D. Monckton, clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing twenty-six (26) pages, numbered from one (1) to twenty-six (26), inclusive, to be a true copy of the assignment of errors and of all proceedings had in the above-entitled case in the said the United States Circuit Court of Appeals for the Ninth Circuit, including the opinion filed, as the same remain of record in my office, and that the same, in connection with the preceding certified copy of the printed transcript of record upon appeal from the United States Circuit Court for the District of Montana, constitute a true copy of the printed record upon which the above-entitled case was heard in the said Circuit Court of Appeals and of all proceedings had therein and the transcript of record upon appeal to the Supreme Court of the United States in the above-entitled case.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 28th day of March, A. D. 1905.

[SEAL.] F. D. MONCKTON, *Clerk.*

96 *Citation.*

The United States Circuit Court of Appeals, Ninth Circuit, to Bitter Root Development Company (a corporation); Anaconda Mining Company (a corporation); Anaconda Copper Company (a corporation); Anaconda Copper Mining Company (a corporation); Margaret P. Daly; Margaret P. Daly, as executrix of the last will and testament of Marcus Daly, deceased; John R. Toole; William W. Dixon; William Scallon; and Daniel J. Hennessy:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, in the District of Columbia, thirty days after the date of this citation, pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein the United States of America is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the honorable William B. Gilbert, judge of the United States Circuit Court of Appeals for the Ninth Circuit, this eleventh day of March, A. D. 1905.

WM. B. GILBERT,
United States Circuit Judge.

97 Service of the within citation is hereby accepted this 21st day of March, 1905.

A. J. CAMPBELL,
Solicitor and of counsel for Margaret P. Daly and Margaret P. Daly, Executrix.
JOHN F. FORBIS and L. O. EVANS,
Solicitors and of counsel for Anaconda Copper Mng. Co., John R. Toole, W. W. Dixon, Wm. Scallon, and Daniel J. Hennessy.

98 (Indorsed:) 1047. United States Circuit Court of Appeals, Ninth Circuit. United States of America, appellant, v. The Bitter Root Development Co. et al., appellees. Citation. Filed Mar. 27, 1905. F. D. Monckton, clerk.

(Indorsement on cover:) File No. 19703. U. S. C. C. of Appeals, 9th Circuit. Term No. 223. The United States, appellant, vs. Bitter Root Development Company, Anaconda Mining Company, Anaconda Copper Company, et al. Filed April 8th, 1905. File No. 19703.

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